



# ASSEMBLY LANDS HOUSING AND ECONOMIC DEVELOPMENT AGENDA

May 22, 2023 at 5:00 PM

Assembly Chambers/Zoom Webinar

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<https://juneau.zoom.us/j/94215342992> or 1-253-215-8782 Webinar ID: 942 1534 2992

**A. CALL TO ORDER**

**B. LAND ACKNOWLEDGEMENT**

We would like to acknowledge that the City and Borough of Juneau is on Tlingit land, and wish to honor the indigenous people of this land. For more than ten thousand years, Alaska Native people have been and continue to be integral to the well-being of our community. We are grateful to be in this place, a part of this community, and to honor the culture, traditions, and resilience of the Tlingit people. Gunalchéesh!

**C. ROLL CALL**

**D. APPROVAL OF AGENDA**

**E. April 24, 2023 Draft Minutes**

1. April 24, 2023 Draft Minutes

**F. AGENDA TOPICS**

2. Tlingit Haida Regional Housing Authority Application to Purchase City Property at Pederson Hill

3. An Ordinance Amending the Sensitive Areas Requirements of the Land Use Code Related to Marine Mammal and Anadromous Waterbody Habitat Protections

**G. STAFF REPORTS**

4. Reiswig Request to Purchase CBJ Property - Verbal Update

5. Douglas Cemeteries - Verbal Update

**H. STANDING COMMITTEE TOPICS**

6. Telephone Hill Updates

7. LHED Committee Goals

**I. COMMITTEE MEMBER / LIAISON COMMENTS AND QUESTIONS**

**J. NEXT MEETING DATE - June 26, 2023**

**K. ADJOURNMENT**

ADA accommodations available upon request: Please contact the Clerk's office 36 hours prior to any meeting so arrangements can be made for closed captioning or sign language interpreter services depending on the meeting format. The Clerk's office telephone number is 586-5278, TDD 586-5351, e-mail: [city.clerk@juneau.gov](mailto:city.clerk@juneau.gov)

# ASSEMBLY LANDS HOUSING AND ECONOMIC DEVELOPMENT MINUTES

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Assembly Chambers/Zoom Webinar



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We would like to acknowledge that the City and Borough of Juneau is on Tlingit land and wish to honor the Indigenous people of this land. For more than ten thousand years, Alaska Native people have been and continue to be integral to the well-being of our community. We are grateful to be in this place, a part of this community, and to honor the culture, traditions, and resilience of the Tlingit people. Gunalchéesh!

## C. ROLL CALL

**Members Present:** Chair Alicia Hughes-Skandijs, Wade Bryson, Christine Woll

**Members Absent:** Wáahlaal Gíidaak

**Liaisons Present:** Mandy Cole, PC

**Liaisons Present:** Chris Mertl, PRAC; D&H liaison

**Staff Present:** Dan Bleidorn, Lands Manager; Roxie Duckworth, Lands & Resources Specialist; Jill Maclean, CDD Director; Joseph Meyers, Housing & Land Use Specialist; Rorie Watt, City Manager

**Members of the Public Present:** Liz Perry, Travel Juneau

## D. APPROVAL OF MINUTES - April 3rd, 2023, Draft Minutes – approved as presented

## E. APPROVAL OF AGENDA – approved as presented

## F. AGENDA TOPICS

### 2. ADUs: An Integral Part of the Juneau Housing Strategy

Mr. Meyers discussed this topic.

Mr. Bryson asked about how the grant amount was determined or is that something that is a moving target that the assembly could determine. Mr. Meyers replied that for option 2, that amount was done by a ratio. The amount that the \$6,000 covered from 2015, from option 1, that was 23% and was projected onto the cost of construction today.

PC Cole asked about the total number of grants, 16, for all the options. Mr. Meyers replied that was a starting point from option 1. PC Cole followed up to comment that if options 2 or 3 were chosen, there might be fewer than 16, as those are more expensive. Mr. Meyers replied that in terms of the number of grants, those are open, and the funding source is something they wanted to work with the assembly on. These are proposed options from staff and are just recommendations.

Mr. Bryson asked if this program was about to expire. Mr. Meyers confirmed that it would be in June. Mr. Bryson followed up to ask if one of the options is to roll this into the Affordable Housing Fund or keep it in a separate fund. He commented that is something the assembly needs to consider.

Ms. Woll noted that options 2 and 3 are different in terms of who we are targeting for the kind of housing we want and who might take advantage of this program. For the recommendation on option 3, how did staff come to that conclusion versus option 2. Mr. Meyers replied that this is the best practice for moving forward with this fund in terms of making an impact on our housing supply. There are a couple of other programs across the country that have seen similar parameters, including \$50,000. Affordability components with this may be a little pie in the sky, but we wanted to make a difference.

PC Cole commented that she was on the Affordable Housing Commission when we came up with this idea, and originally it was meant to be a loan. At the time, the city was unable, unwilling, to make loans at this scale. It did not make fiscal sense for the city to make these loans, although, looking through the

packet, it looks like there may be a possibility for loans in the future. I can tell you that the original idea was that if you were going to build an accessory apartment like a luxury apartment, and make money, then it would be a loan. If you are going to build an accessory apartment that addresses the affordability question, it could be a grant, that was the original thought behind this idea back in 2015 or 2013. Mr. Bleidorn commented that the city should be cautious with loaning money. 16 low value loans are an extreme amount of energy, whereas, if we have one or two loans that are in the multimillion-dollar range, which is also a different story for staff time.

Mr. Bryson commented that he likes where the staff is thinking about this and that we do not want to help someone who does not need it but incentivize them a little more. But we do want to help people that need it, that is a fine line to walk. The one benefit is that any homeowner that adds on an apartment is adding value to their home, and I noticed that Mr. Meyer said that his chart included that increase in valuation. That is not the true cost of what somebody building, they do some of the labor themselves. There's a couple of different ways that could lower the cost to get something built and that we are helping owners add value to their homes. But my question is, switching gears, does this have a funding source, is it automatic with assembly funding, or in the budget? Mr. Meyers replied that this could potentially come from the affordable housing fund, but we have not determined a funding source.

PC Cole asked if the decrease in popularity since 2020 is just due to the rising construction costs, if it did not make as much fiscal sense, even with the \$6,000. Mr. Meyers replied that antidotally that is what was thought that decreased popularity.

Ms. Woll asked about the decrease in popularity if it was for the grant program or for people building dwelling units. Mr. Meyers replied that he could get more information. Ms. Maclean commented staff could check in on the answer and noted the significance of a 10-year covenant on short-term rentals and the higher grant amount and that is one struggle that has been seen. We will know more with the new program for short-term rentals. But if we do end up restricting it to where you cannot do short-term rentals, then I do think the amount needs to increase to offset that difference. I want to come back to the other point that Mr. Meyers made for \$50,000, this is at the 80% AMI. I do not know about all of you, but when I see a family of 4 making \$96,000 in Juneau, I don't know how you do that. This is just another way for those families to get on track here. Those are the two things I really wanted to stress, that we are proposing a ten- moratorium on short term rentals for that larger loan amount and to adjust the AMI that is associated with it, that it would be for those that cannot afford it otherwise.

Ms. Woll commented that she thinks this should stay in committee as she is not ready to articulate all her questions, but an understanding of what the trends are in the number of dwelling units being built in the community would be helpful. She is not interested in options 1 or 4, but options 2 and 3 deserve some discussion about who we are trying to target. If our real issue is nobody's building units, then option 2 starts to look appealing. If we are worried about no one's building affordable units, then option 3 looks more appealing to me. I would also be curious if, as an experiment, we could try both where we advertise grants of up to \$50,000, and when people show up, we give them the option of signing up for a 10-year covenant or keeping rent at a certain level. Do you want the grant with less stipulation, I do not that would be too much work, but all I am trying to say is, I'm still mulling this one over, and I think we should be strategic about which of these options we choose and be able to articulate.

Mr. Bryson commented that it is a great point to keep it in committee, because we need to figure a couple of these questions out. At \$6,000, it was only a \$96,000 program, not large, and moving to \$13,500 suddenly, we are at \$216,000, and then, if we go to \$50,000, it is \$800,000. That is almost a million-dollar program, how sustainable is that. However, what we are describing now is we want these built with the same kind of consideration that the Affordable Housing Fund is also distributing funds. So how do we combine this with the Affordable Housing Fund. The same questions that would need to be answered for units that are benefiting from the Affordable Housing Fund, it is the same process that we

would need to verify these units. There are stipulations in the Affordable Housing Fund when they go out for loans. It depends on their structure of what they ask from us. If they ask for grants, ask for loans, we have the Affordable Housing Fund to answer some of these questions.

Chair Hughes-Skandijs thought this would be a mix. Mr. Bleidorn commented that he is not familiar with that, since he is not working directly in housing in this manner but knew that we solicit bids in projects that have guidelines with those solicitations that can be specific. This is a bit more general and loosely fits the same parameters. But we risk making this overly complicated as well, that is something to be cautious that as well.

Chair Hughes-Skandijs commented that she was excited by the staff recommended option, because there is a need to make sure we articulate and be smart with the who and why we are targeting. But when I look at that, what I see is the city directly, If the public will take advantage of it, putting funding into 16 more units, that is extremely attractive to me and the creation of those dwelling units. If you look at what the actual rental price with the AMI limits are, that does not seem crazy to me. The 10 year covenant, unless that truly puts people off, I still think would be a good experiment, because if you're at the level that the city is paying for 87% of the cost of the build, you're still coming out pretty well ahead, even if you're capping your rent at a certain point, it just turned you basically into a landlord and you have an additional stream of income. I am more comfortable with this moving forward, but I get that the will of the committee wants to keep this in committee, so that is indeed the case, and that is where we will keep it. Just a few points. I think that we should keep in mind that this is, if we are truly trying to be aggressive on housing, a way that we can put this out there and see if the public is willing to take advantage of it and we are putting city funding into creating additional units.

PC Cole commented that if the goal is to house people in Juneau there is the ability of the staff to track these covenants, then there is no reason to not have those covenants on the lower cost options. Short-term rentals were not something when we came up with this, but partly it was the idea of tracking incomes was another layer of work for the staff, but that is something that they think they can handle. I am not sure as a citizen that I expect my city to help me pay for an apartment that I am going to turn into a short-term rental business, and I am okay with that.

Mr. Bryson commented that he would be more comfortable if we included both options 2 and 3. I do not think that we should limit ourselves if we had a minimum grant of \$13,500. If you had a qualifier, we do not have to limit the size of the grant. Bring in any option or options 2 or 3, so that way in which we can help the assembly narrow it down. I do not think that we need one over the other right now, leaving the assembly more flexibility to decide what the numbers are depending on different criteria. Maybe then we will target the different needs of the community.

Ms. Woll supported Mr. Bryson's recommendation for a modified motion.

Chair Hughes-Skandijs rejected for the purpose of a question and asked about the sunset date. Ms. Maclean replied that it is June 30, 2023.

**Motion: Mr. Bryson moved that the LHEDC provide a motion of support the continuation of the Accessory Dwelling Unit Grant Program (formerly the Accessory Apartment Grant Program) for Options 2 and 3. For Option 2, the guidelines are: a \$13,500 grant amount, no Short-term Rentals (STRs) for 3 years, the Qualifying Parameter of Receiving Certificate of Occupancy within 1 year of permit issuance, no Affordability requirement, First come, first served Distribution strategy, and Annual reporting requirement for three years. Option 3 guidelines are: a \$50,000 grant amount, no Short-term Rentals (STRs) for 10 years, the Qualifying Parameter of Receiving Certificate of Occupancy within 1 year of permit issuance, Affordability requirements are to have affordability for 80% AMI for 10 years through a recorded covenant, First come, first served Distribution strategy, and Annual**

reporting requirement for ten years. A total of 16 grants combined between the two options are part of the guidelines. Motion passed no objections.

**G. STAFF REPORTS**

**3. Housing Loans**

Mr. Watt discussed this topic.

Mr. Bryson asked about the development community, do they agree with the 25-75% split, and whether it would do the things we wanted to do. Mr. Watt replied that he has had a lot of scattered conversations, but from the Chamber and Development community I have heard a strong opinion that we should not be getting in projects that have a higher than 75% loan dev value because you are starting to get in risky territory.

PC Cole asked when it says loans up to \$50,000 per multifamily unit created, what is that? Mr. Watt replied that is \$50,000 per dwelling unit. This first phase is a 24-unit apartment building, the loan would be \$1.2 million.

**Motion: Mr. Bryson moved that the LHEDC forward this ordinance for introduction at the May 8, 2023, regular assembly meeting. No objections.**

**4. Travel Juneau 3rd Quarter Update**

Ms. Perry discussed this topic.

**5. Land Use Code Work Status Verbal Update**

Ms. Maclean discussed this topic. No questions brought forward.

**H. STANDING COMMITTEE TOPICS**

Mr. Bleidorn discussed these topics.

6. Telephone Hill Updates – progress continues

7. LHED Committee Goals – Mr. Bleidorn reached out to the State about the 2<sup>nd</sup> and Franklin lot.

**I. COMMITTEE MEMBER / LIAISON COMMENTS AND QUESTIONS - none**

**J. NEXT MEETING DATE - May 22, 2022**

**K. ADJOURNMENT – 5:55 pm**

# MEMORANDUM

## CITY/BOROUGH OF JUNEAU

Lands and Resources Office  
155 S. Seward St., Juneau, Alaska 99801  
Dan.Bleidorn@juneau.org  
(907) 586-5252

**TO:** Alicia Hughes-Skandijs, Chair of the Assembly LHED Committee  
**FROM:** Dan Bleidorn, Lands and Resources Manager *Daniel Bleidorn*  
**SUBJECT:** Tlingit Haida Regional Housing Authority Application to Purchase City Property at Pederson Hill  
**DATE:** May 18, 2023

The LHED Committee reviewed this proposed CBJ land disposal at the meeting August 29, 2022 meeting, and passed a motion of support to the Assembly to direct the Manager to negotiate the sale of the CBJ property for less than fair market value. The Assembly reviewed this application as New Business at the September 12, 2022 meeting and passed a motion authorizing the City Manager to enter into negotiations with Tlingit Haida Regional Housing Authority towards the disposal of City property for less than fair market value.

The outcome of the negotiations is the attached Purchase and Sales Agreement, which both parties have tentatively agreed to, pending Assembly review and approval of an ordinance after a public hearing. At this time Staff requests this Committee review the Purchase and Sales Agreement and provide questions and comments prior to the ordinance being introduced at the next available Assembly meeting.

**Staff requests that the Lands Housing and Economic Development Committee direct the City Attorney to draft an ordinance for introduction for the disposal of City property to Tlingit Haida Regional Housing Authority.**

53.09.260 - Negotiated sales, leases, and exchanges.

(a) Application, initial review, assembly authority to negotiate. Upon application, approval by the manager, and payment of a \$500.00 fee, a person or business entity may submit a written proposal to lease, purchase, exchange, or otherwise acquire City and Borough land for a specified purpose. The proposal shall be reviewed by the assembly for a determination of whether the proposal should be further considered and, if so, whether by direct negotiation with the original proposer or by competition after an invitation for further proposals. Upon direction of the assembly by motion, the manager may commence negotiations for the lease, sale, exchange, or other disposal of City and Borough land.

(b) Review and approval process. Upon satisfactory progress in the negotiation or competition undertaken pursuant to subsection (a) of this section, after review by the planning commission for disposals other than leases, after review by the assembly lands committee, and authorization by the assembly by ordinance, the manager may conclude arrangements for the lease, sale, exchange, or other disposal of City and Borough land. The final terms of a disposal pursuant to this section are subject to approval by the assembly unless the minimum essential terms and the authority of the manager to execute the disposal are set forth in the ordinance enacted pursuant to this subsection. The disposal may not be executed until the effective date of the ordinance.

53.09.270 - Disposals for public use.

(a) Disposal to governmental agency. The lease, sale, or other disposal of municipal land or resources may be made to a state or federal agency for less than the market value provided the assembly approves the terms and conditions of such disposal by ordinance.

(b) Disposal to nongovernmental agency. The sale, lease, or other disposal of City and Borough land or resources may be made to a private, nonprofit corporation at less than the market value provided the disposal is approved by the assembly by ordinance, and the interest in land or resource is to be used solely for the purpose of providing a service to the public which is supplemental to a governmental service or is in lieu of a service which could or should reasonably be provided by the state or the City and Borough.

(c) The market value, as determined by the manager, of City and Borough land, interest in land or resources, which is granted to a governmental or nongovernmental agency under this section, shall be set forth in the authorizing ordinance. The City and Borough may require the grantee to provide an appraisal to determine the market value.

Attachments:

Draft Purchase and Sales Agreement  
Area Maps

Recorded in the Juneau Recording District.

When recorded return to:

City and Borough of Juneau, AK  
Attn: Division of Lands and Resources  
155 S. Seward St  
Juneau, AK 99801

**Document Title:** Purchase and Sale Agreement

**Seller:** City and Borough of Juneau, Alaska

**Buyer:** Tlingit Haida Regional Housing Authority

**Legal Description:** PEDERSON HILL II LT 2B

**Assessor's Parcel Number:** 4B2201010103

## PURCHASE AND SALE AGREEMENT

This Real Estate Purchase and Sale Agreement ("Agreement") is entered into between the City and Borough of Juneau, Alaska, a municipal corporation in the State of Alaska ("Seller"), and Tlingit Haida Regional Housing Authority ("Buyers"). The Seller and Purchaser are collectively referred to herein as "the Parties."

In consideration of the mutual promises and valuable consideration set forth in this Agreement, the Parties agree as follows:

**1. CBJ Authority.** CBJC 53.09.270 authorizes the Disposal of City property for public use. The CBJ Assembly authorized the sale of the real property subject to this Agreement under Ordinance 2023-XX, adopted on DATE

**2. Purchase and Sale.**

**21 Property to be Conveyed.** Subject to all of the provisions of this Agreement, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, all of the following described real estate, situated in the Recording District of Juneau, First Judicial District, State of Alaska ("Property"):

Lot 2B, Pederson Hill Subdivision II, according to Plat 2019-34, Records of the Juneau Recording District, First Judicial District, State of Alaska, together with all after acquired title of the CBJ therein.

**22 Nature of Property Conveyed.** The Property is vacant land zoned D10SF with the total area of approximately 11.5 acres or approximately 500,263 square feet. The conveyance of the Property under this Agreement shall be in fee simple and includes all interests therein, including without limitation: (a) all standing and down timber; and (b) all rights,



privileges, and easements appurtenant to the Property including, without limitation (i) oil, gas, other hydrocarbon substances, metals, limestone, rock, sand, and gravel, except any such mineral rights reserved in the original patent to the Property and not owned or controlled by Seller; (ii) all development rights, air rights, water, water rights, and water stock relating to the Property; and (iii) all easements, rights-of-way, and other appurtenances used in connection with the beneficial use and enjoyment of the Property. No material change shall be made to the Property's current condition from the effective date of this Agreement until the time of Closing (as defined in Section 5 hereof).

**23 Use of Premises.** Purchaser understands and agrees that Seller is only conveying the Property on the express condition that it be developed as single-family homes with lot sizes and layout similar to the attached preliminary plat. The development of this property will include the public use and preservation lots included in the preliminary plat.

**24 Approval of Other Authorities.** Purchaser understands that by Seller conveying the Property for the use provided above, Purchaser is not relieved of its responsibility for obtaining all licenses, permits, or approvals as may be required by Seller or by duly authorized state or federal agencies for the development of the Property.

**3. Purchase Price.** Seller agrees to sell the Property to Purchaser, and Purchaser agrees to purchase the Property from Seller, for the total sum of **Seven Hundred Thousand Eighty Dollars (\$700,000) ("Purchase Price")**

**4. Payment.** The Purchase Price shall be paid by Purchaser to Seller as follows:

**41** The Purchaser agrees to pay the purchase price of **\$700,000**. Fair Market Value has been determined to be \$700,000.

**42** The payment of \$100,000 will be due at closing.

**43** The remaining balance of \$600,000 will be due on December 31, 2033 but will be considered forgiven or paid in full once the following conditions are met, prior to payment being due on December 31, 2033.

- \$100,000 will be automatically forgiven if a final plat similar to what has been considered Phase 1B, which includes roughly 5.1 acres with 30 residential lots and two public use lots, is recorded within 3 years of the property conveyance.
- \$100,000 will be automatically forgiven if the Purchaser has received certificates of occupancy for 15 housing units within 5 years of conveyance.
- \$200,000 will be automatically forgiven if a final plat similar to what has been considered Phase 1C, which includes roughly 6.4 acres with approximately 39 residential lots.
- \$200,000 will be automatically forgiven if the Purchaser has

received certificates of occupancy for 15 housing units within phase 1C within 10 years of conveyance

**5. Development of Workforce and Affordable Housing.** Tlingit Haida Regional Housing Authority shall be required to develop the property in accordance with **Ordinance 2023-XX**. Failure to develop the property in accordance with this agreement and referenced documents will result in the THRHA becoming ineligible for future requests for negotiated sale or sale for public use land sales for 15 years.

**6. Effective Date.** This Agreement shall be effective and binding upon either party only upon such date that this Agreement is fully executed by all parties on the signature page. This provision may not be waived by partial performance or otherwise and no reliance shall be placed on this Agreement until it is so executed.

**7. Closing.**

**7.1** The closing of this transaction (“Closing”) shall occur through the office of **First American Title Insurance Company**, and shall take place on or before August 1, 2023.

**7.2** For purposes of this Agreement the Closing shall be deemed to have occurred on the date when the Quitclaim Deed (as defined in Section 6 hereof) is recorded. The date on which the Closing actually occurs shall be the “Closing Date” for all purposes under this Agreement.

**7.3** All closing documents in addition to this Agreement, Deed of trust, Deed of Trust Note and the Quitclaim Deed will be drafted by the Closing Office and provided to Seller and Purchaser for review and approval before the Closing Date (“Closing Documents”). It shall be a condition to Closing that Seller and Purchaser shall have approved the Closing Documents, if any.

**7.4** Seller is not paying any Closing costs except Seller’s attorney fees, if any. Purchaser is responsible for any and all Closing costs.

**8. Quitclaim Deed.** Seller shall execute, notarize and deliver to the Closing Office immediately prior to the Closing Date, a quitclaim deed for conveyance of the Property from Seller to Purchaser in the form of Exhibit A attached to this Agreement (“Quitclaim Deed”).

**9. No Financial or Inspection Contingencies.** Purchaser agrees that this Agreement is not contingent on Purchaser securing a loan or conducting a physical inspection of the Property. Purchaser waives any financial and inspection contingencies.

**10. Preliminary Title Report.** Immediately after signing this Agreement, Seller and Purchaser shall cooperate to cause the Closing Office to prepare and issue a preliminary title report for the Property ("PTR"). The cost of the PTR, if any, shall be paid by Purchaser. It shall be a condition to Closing that Purchaser has reviewed and approved the PTR and any changes to the PTR that may be required by Purchaser in order to cause the PTR to be acceptable to Purchaser. Seller and Purchaser shall act reasonably and in good faith regarding the PTR and any changes to the PTR that may be necessary in order to cause the PTR to be acceptable to Purchaser.

**11. Title Insurance.** Purchaser shall be entitled to obtain an ALTA title insurance policy for Purchaser's acquisition of the Property, including any endorsements selected by Purchaser ("Title Insurance"). Purchaser shall pay the cost for a standard ALTA title insurance policy ("Standard ALTA Cost"), and all title insurance costs in excess of the Standard ALTA Cost. It shall be a condition to Closing that Purchaser has reviewed and approved the provisions of the Title Insurance and any changes to the Title Insurance that may be required by Purchaser in order to cause the Title Insurance to be acceptable to Purchaser. Seller and Purchaser shall act reasonably and in good faith regarding the Title Insurance and any changes to the Title Insurance that may be necessary in order to cause the Title Insurance to be acceptable to Purchaser.

**12. Taxes.** As of the Closing, all property taxes shall be prorated by the Closing Office between Seller and Purchaser, and paid by Seller and Purchaser on the basis of such proration. Regardless of any contrary provision of this Agreement, Seller shall give the Property and Purchaser full benefit of any property tax abatements, eliminations or reductions that have been or will be approved by Seller at any time.

**13. Escrow Agent Instructions.** The provisions of this Section 11 shall constitute the joint instructions of the Parties to the Closing Office.

**13.1** The Closing Office shall receive, hold and disburse all funds, arrange the execution, delivery and recording of all documents and instruments necessary to this transaction and shall otherwise act in accordance with the mutual written instructions of the Parties to this Agreement and in accordance with the laws of the State of Alaska.

**13.2** At the Closing, the Closing Office shall record the Quitclaim Deed and all other documents necessary to transfer title to the Property from Seller to Purchaser.

**13.3** At Closing, the Closing Office shall cause the Title Insurance to be issued to Purchaser.

**13.4** As of the Closing, the Closing Office shall cause all assessments and utilities, if any, to be prorated between Seller and Purchaser, and paid by Seller and Purchaser on the basis of such proration.

**135** Prior to the Closing, the Closing Office shall provide preliminary closing and/or settlement statements to Seller and Purchaser (collectively “Closing Statements”). It shall be a condition to Closing that Seller and Purchaser shall have approved their respective Closing Statements.

**136** The Parties agree to provide any necessary supplemental instructions requested by the Closing Office, and to cooperate in good faith to effectuate the purpose of this Agreement.

**14. No Warranties.** Purchaser specifically acknowledges and agrees that (a) Seller does not make any representations or warranties of any kind, either express or implied, with respect to the Property, and (b) the Property is conveyed to Purchaser in an “AS IS” and “WITH ALL FAULTS” condition as of the Closing Date, including, without limitation, the condition or stability of the soils or ground waters, the presence or absence of hazardous materials on or under the Property, the suitability of the Property for any construction or development, and zoning and similar matters.

**15. Alaska Residential Real Property Transfer Disclosure Statement Waiver.** Consistent with A.S. 34.70.110, the Parties waive the requirement to complete the disclosure statement, if one is required.

**16. Possession and Risk of Loss.** Seller retains possession and assumes risk of loss prior to Closing. Purchaser shall be entitled to possession of the Property upon the Closing Date.

**17. Indemnification.** Purchaser shall indemnify, defend, and hold Seller harmless from and against any claims, actions, costs, expenses and liabilities, including without limitation payment of reasonable attorney’s fees, which Seller may suffer or incur as a result of any failure of Purchaser to perform any of its warranties or obligations hereunder.

**18. Survival.** All warranties, representations, covenants, obligations and agreements contained in or arising out of this Agreement or in any certificates or other documents required to be furnished hereunder, shall survive Closing. All warranties and representations shall be effective regardless of any investigation made or which could have been made.

**19. Default.**

**19.1** In the event Seller defaults in its obligations under this Agreement, Purchaser may only specifically enforce this Agreement or rescind this Agreement.

**19.2** If the transaction does not close before the close of business on the Closing Date and through no fault of Seller, this Agreement will be of no further effect.

**20. Non-Foreign Affidavit.** Seller is not a foreign person as the term is used and defined in Section 1445 of the Internal Revenue Code, as amended, and regulations promulgated thereunder. Seller shall, upon written request of Purchaser, complete an affidavit to such effect.

**21. Notices.** All notices required to be given under this Agreement shall be in writing and shall be deemed delivered: (a) on the date of delivery if delivered via electronic mail (“e-mail”), and the party delivering notice has a record of successful transmission; (b) on the next business day if delivered by a nationally recognized overnight courier service; or (c) on the second business day after mailing if mailed by first class U.S. mail, postage prepaid, return receipt requested, to the address of the other party to be notified as listed below. Either party may, by written notice to the other, designate a different address or e-mail address for purposes of this Agreement.

**21.1 Seller’s Contact:**

The City and Borough of Juneau  
Attn: Lands & Resources Manager  
155. S. Seward Street  
Juneau, AK 99801  
Phone: 907.586.5252  
Email: [Lands\\_Office@juneau.ak.us](mailto:Lands_Office@juneau.ak.us)

**21.2 Purchaser’s Contact:**

Tlingit Haida Regional Housing Authority  
Attn: Jacqueline Pata  
Address: 5446 Jenkins Drive  
Juneau, AK 99801  
Phone: 907-780-3194  
Email: [jpata@thrha.org](mailto:jpata@thrha.org)

**22. Email.** Purchaser and Seller acknowledge and agree that: (a) e-mail is an acceptable form of written communication and may be used by the Parties as a method of delivering notices required under this Agreement; provided, however, Purchaser and Seller may only use the e-mail address(es) listed above to send, forward or receive e-mail communication for matters relating to this Agreement.

**23. Time of Essence.** Time is of the essence of this Agreement.

**24. Binding Effect/Assignment Restricted.** This Agreement is binding on and will inure to the benefit of Seller, Purchaser, and their respective heirs, legal representatives, successors, and assigns. Nevertheless, neither Purchaser nor Seller may assign their respective rights or obligations under this Agreement.

25. **No Brokers or Agents.** Seller and Purchaser represent and warrant to each other that they have not employed the services of a real estate broker or agent in connection with this Agreement, or that if such brokers or agents have been employed, the party employing said brokers or agents will pay any and all expenses, fees, and commissions outside the Closing of this Agreement.

26. **Free and Voluntary Agreement.** The Parties have read all of this Agreement and fully understand all of the terms and their significance. The Parties execute this instrument freely and voluntarily for the purpose of conveying title to the Property from Seller to Purchaser in exchange for the Purchase Price.

27. **Entire Agreement.** This Agreement sets forth the entire understanding of the Parties with respect to the purchase and sale of the Property. This Agreement supersedes any and all prior negotiations, correspondence, discussions, agreements, and understandings, whether oral or written, between the Parties. This Agreement may not be modified or amended except by a written agreement executed by both Parties.

28. **Severability.** If one or more of the provisions of this Agreement is held invalid, illegal or unenforceable in any respect, such holding will not impair the validity, legality, or enforceability of the remaining provisions.

29. **Construction.** The Parties have reviewed and negotiated this Agreement. The Parties agree that any ambiguities will not be construed against either Party.

30. **Law and Forum Selection.** The Superior Court for the State of Alaska, First Judicial District at Juneau, Alaska, shall be the exclusive jurisdiction for any action of any kind and any nature arising out of or related to this Agreement. Venue for trial in any action shall be in Juneau, Alaska. The laws of the State of Alaska shall govern the rights and obligations of the parties. The Parties specifically waive any right or opportunity to request a change of venue pursuant to A.S. 22.10.040.

31. **Applicability of Alaska Public Records Act.** Purchaser acknowledges and understands that Seller is subject to the Alaska Public Records Act (A.S. 40.25.120) and that all documents received, owned or controlled by Seller in relation to this Agreement must be made available for the public to inspect upon request, unless an exception applies. It is Purchaser's sole responsibility to clearly identify any documents Purchaser believes are exempt from disclosure under the Public Records Act by clearly marking such documents "Confidential." Should Seller receive a request for records under the Public Records Act applicable to any document marked "Confidential" by Purchaser, Seller intends to notify Purchaser as soon as practicable prior to making any disclosure. Purchaser acknowledges it has five (5) calendar days after receipt of notice to notify Seller of its objection to any disclosure, and to file any action with any competent court Purchaser deems necessary in order to protect its interests. Should Purchaser fail to notify Seller

of its objection or to file suit, Purchaser shall hold Seller harmless of any damages incurred by Purchaser as a result of Seller disclosing any of Purchaser’s documents in Seller’s possession. Additionally, Purchaser may not promise confidentiality to any third party on behalf of Seller, without first obtaining express written approval by Seller.

**32. Counterparts.** This Agreement may be signed in multiple counterparts with the same effect as if all parties signed the same document. Delivery of a legible photocopy, telefax, or scanned copy of the entire signed original of this Agreement will be treated the same as delivery of the original.

**33. Effective Date.** This Agreement shall be effective and binding upon either party only upon such date that this Agreement is fully executed by all parties on the signature page. This provision may not be waived by partial performance or otherwise and no reliance shall be placed on this Agreement until it is so executed. By signing below, the Parties represent and warrant that they have the authority to enter into this Agreement.

SELLER:	PURCHASER:
CITY AND BOROUGH OF JUNEAU, ALASKA, a municipal corporation in the State of Alaska	Tlingit Haida Regional Housing Authority
By: _____	By: _____
Duncan Rorie Watt City Manager	Name: Jacqueline Pata
City Manager	Title: President & CEO
Date: _____	Date: _____

Approved as to Content: \_\_\_\_\_ CBJ Lands Division

Approved as to Form: \_\_\_\_\_ CBJ Law Department

EXHIBIT A

AFTER RECORDING MAIL TO:

Name:  
Attn:  
Address:  
File No.:

QUIT CLAIM DEED

THE GRANTOR, City and Borough of Juneau, whose address is 155 S. Seward Street, Juneau, AK 99801, for and in consideration of 10.00, conveys and quit claims to Tlingit Haida Regional Housing Authority, whose address is \_\_\_\_\_, the following described real estate, situated in the Recording District of Juneau, First Judicial District, State of Alaska:

Lot 2B, Pederson Hill Subdivision II, according to Plat 2019-34, Records of the Juneau Recording District, First Judicial District, State of Alaska, together with all after acquired title of the CBJ therein.

SUBJECT TO reservations, exceptions, easements, covenants, conditions, and restrictions of record, if any.

Dated: \_\_\_\_\_, 2018

GRANTOR: CITY AND BOROUGH OF JUNEAU

By: \_\_\_\_\_  
Name: Duncan Rorie Watt  
Its: CBJ Manager

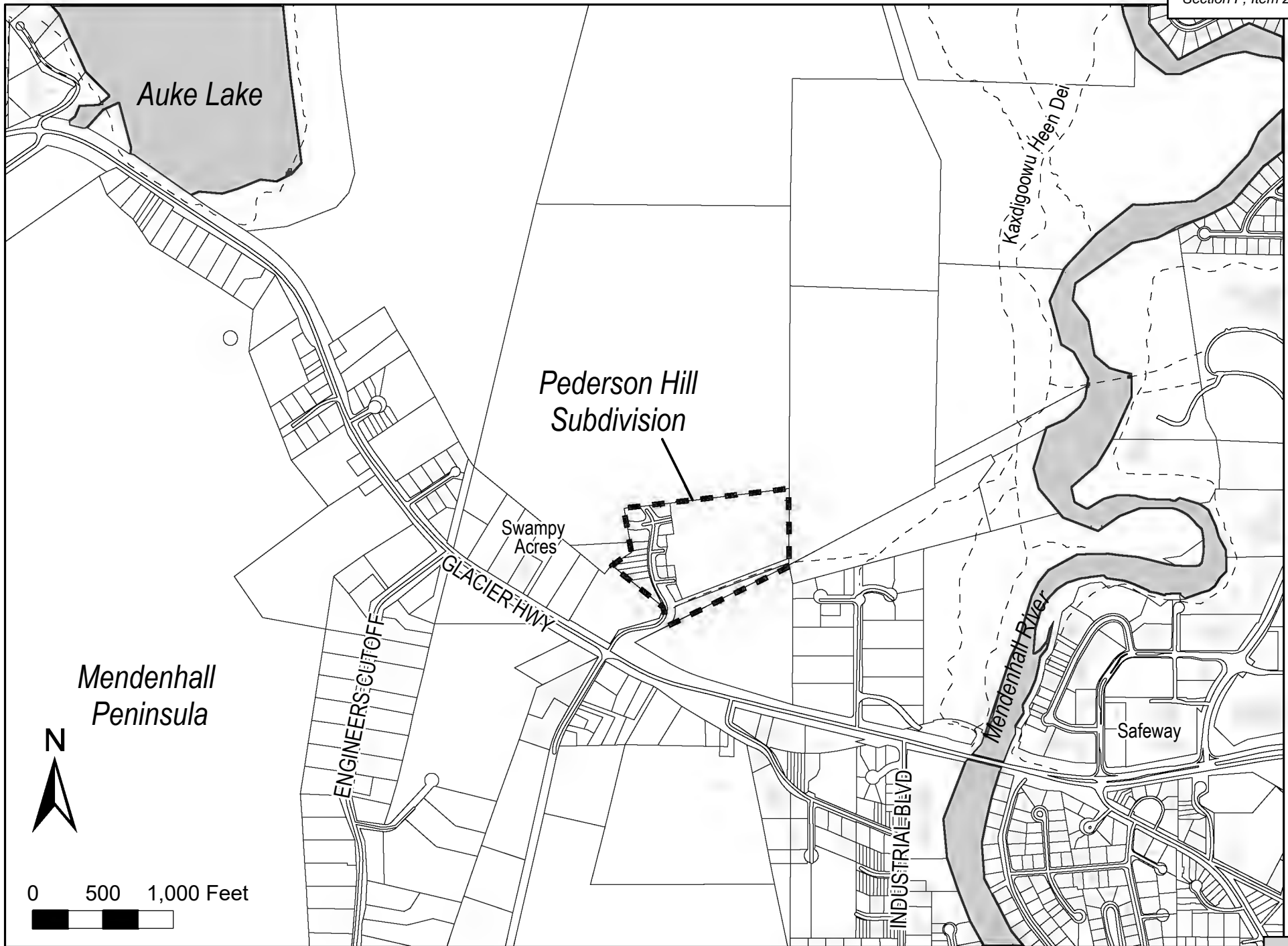
STATE OF ALASKA )  
FIRST JUDICIAL DISTRICT )ss.

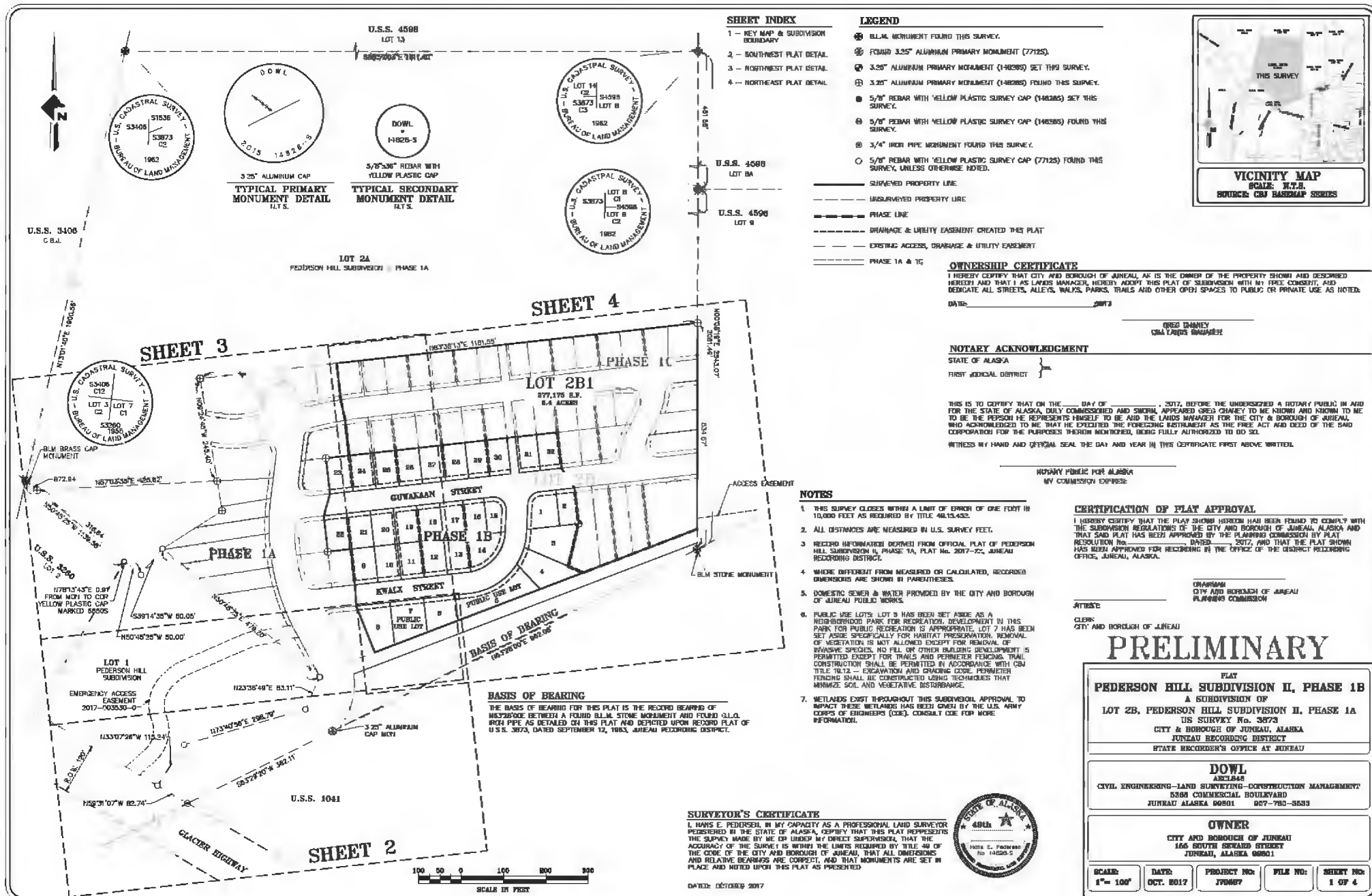
THIS IS TO CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, before me, the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared **Duncan Rorie Watt**, to me known and known to me to be the Manager of **CITY AND BOROUGH OF JUNEAU**, and known to me to be the person who signed the foregoing instrument, on behalf of said corporation, and he acknowledged to me that he signed and sealed the same as a free act and deed of the said municipal corporation for the uses and purposes therein expressed.

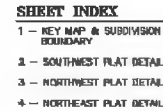
WITNESS my hand and official seal on the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires: \_\_\_\_\_









- # LEGEND
- BLM MONUMENT FOUND THIS SURVEY.
  - FOUND 3.25" ALUMINUM PRIMARY MONUMENT (77125).
  - 3.25" ALUMINUM PRIMARY MONUMENT (148285) SET THIS SURVEY.
  - 3.25" ALUMINUM PRIMARY MONUMENT (148285) FOUND THIS SURVEY.
  - 5/8" REBAR WITH 'YELLOW PLASTIC SURVEY CAP' (148285) SET THIS SURVEY.
  - 5/8" REBAR WITH 'YELLOW PLASTIC SURVEY CAP' (148285) FOUND THIS SURVEY.
  - 3/4" IRON PIPE MONUMENT FOUND THIS SURVEY.
  - 5/8" REBAR WITH 'YELLOW PLASTIC SURVEY CAP' (77125) FOUND THIS SURVEY, UNLESS OTHERWISE NOTED.
  - SURVEYED PROPERTY LINE.
  - UNSURVEYED PROPERTY LINE.
  - PHASE LINE.
  - DRAINAGE & UTILITY EASEMENT CREATED THIS PLAT.
  - EXISTING ACROSS, DRAINAGE & UTILITY EASEMENT.
  - PHASE 1A & 1B
  - OWNERSHIP CERTIFICATE

\_\_\_\_\_ I HEREBY CERTIFY THAT CITY AND BOROUGH OF JUNEAU, AK IS THE OWNER OF THE PROPERTY SHOWN AND DESCRIBED HEREON AND THAT I AS LANDS MANAGER, HEREBY ADOPT THIS PLAT OF SUBDIVISION WITH MY FREE CONSENT, AND DEDICATE ALL STREETS, ALLEYS, WALKS, PARKS, TRAILS AND OTHER OPEN SPACES TO PUBLIC OR PRIVATE USE AS NOTED:

DATE: \_\_\_\_\_ 2017

**GREG CHANEY**  
**FIN LANDS MANAGER**

STATE OF ALASKA }  
FIRST JUDICIAL DISTRICT }

THIS IS TO CERTIFY THAT ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 2017, BEFORE ME, THE UNDERSIGNED A NOTARY PUBLIC IN AND FOR THE STATE OF ALASKA, DULY COMMISSIONED AND SWORN, APPEARED GREG SHAWNEY TO ME KNOWN AND KNOWN TO ME TO BE THE PERSON HE REPRESENTS HIMSELF TO BE AND THE LANDS MANAGER FOR THE CITY & BOROUGH OF JUNEAU, WHO ACKNOWLEDGED TO ME THAT HE EXECUTED THE FOREGOING INSTRUMENT AS THE FREE ACT AND DEED OF THE SAID CORPORATION FOR THE PURPOSES THEREIN MENTIONED, BEING FULLY AUTHORIZED TO DO SO.

WITNESS MY HAND AND OFFICIAL SEAL THE DAY AND YEAR IN THIS CERTIFICATE FIRST ABOVE WRITTEN.

NOTARY PUBLIC FOR ALASKA  
MY COMMISSION EXPIRES:

I HEREBY CERTIFY THAT THE PLAT SHOWN HEREON HAS BEEN FOUND TO COMPLY WITH THE SUBDIVISION REGULATIONS OF THE CITY AND BOROUGH OF JUNEAU, ALASKA AND THAT SAID PLAT HAS BEEN APPROVED BY THE PLANNING COMMISSION BY PLAT RESOLUTION No. \_\_\_\_\_, DATED \_\_\_\_\_, 2017, AND THAT THE PLAT SHOWN HAS BEEN APPROVED FOR RECORDING IN THE OFFICE OF THE DISTRICT RECORDING OFFICE, JUNEAU, ALASKA.

CITY AND BOROUGH OF AUREAU  
PLANNING COMMISSION

ARTISTE  
CLERK  
CITY AND BOROUGH OF JUNEAU

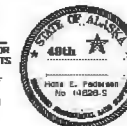
## PRELIMINARY

FLAT  
PEDERSON HILL SUBDIVISION II, PHASE 1C  
A SUBDIVISION OF  
LOT 2C, PEDERSON HILL SUBDIVISION II, PHASE 1B  
US SURVEY No. 3873  
CITY & BOROUGH OF JUNEAU, ALASKA  
JUNEAU RECORDING DISTRICT  
STATE RECORDER'S OFFICE AT JUNEAU

CIVIL ENGINEERING—LAND SURVEYING—CONSTRUCTION MANAGEMENT  
5586 COMMERCIAL BOULEVARD  
JUNEAU ALASKA 99801 907-780-3553

CITY AND BOROUGH OF JUNEAU  
166 SOUTH SEWARD STREET  
JUNEAU, ALASKA 99801

SCALE: 1" = 100'	DATE: OCT. 2017	PROJECT NO: J70487	FILE NO:	SHEET NO: 1 OF 4
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I, HANS E. PEDERSEN, IN MY CAPACITY AS A PROFESSIONAL LAND SURVEYOR REGISTERED IN THE STATE OF ALASKA, CERTIFY THAT THIS PLAT REPRESENTS THE SURVEY MADE BY ME OR UNDER MY DIRECT SUPERVISION, THAT THE ACCURACY OF THE SURVEY IS WITHIN THE LIMITS REDUCED BY TITLE 48 OF THE CODE OF THE CITY AND BOROUGH OF JUNEAU, THAT ALL DIMENSIONS AND RELATIVE BEARINGS ARE CORRECT, AND THAT MONUMENTS ARE SET IN PLACE AND NOTED UPON THIS PLAT AS REPRESENTED.

DATED: OCTOBER 2017



City and Borough of Juneau  
City & Borough Manager's Office  
155 South Seward Street  
Juneau, Alaska 99801  
Telephone: 586-5240 | Facsimile: 586-5385

To: Chair Hughes-Skandijs and Lands Housing & Economic Development Committee

From: Rorie Watt, City Manager

Re: An Ordinance Amending the Sensitive Areas Requirements of the Land Use Code Related to Marine Mammal and Anadromous Waterbody Habitat Protections

(aka Stream Setback Buffer Ordinance)

### Background

The anadromous waterbodies ordinance (aka stream setback / buffer) has been in the works off and on for a number of years. The desire for a revision to this code was presented years ago by developers who struggled with limited work area during construction. For example, when constructing a single-family dwelling on a property with a stream buffer, the developer has to site the dwelling at approximately 65 to 70 feet from the stream to ensure the buffer is not disturbed—no work can occur within the 50 foot buffer, per current code.

Most recently, the Planning Commission Title 49 Committee discussed the draft ordinance off and on from the spring of 2021 to the spring of 2022. At the Title 49 Committee meeting on May 4, 2022, the Committee reached consensus and forwarded a draft ordinance to the Planning Commission (Commission).

After the May 4, 2022, Title 49 Committee meeting, the ordinance was worked on by staff at CDD and Law. A revised draft ordinance, incorporating much of the Title 49 Committee revisions was then presented to the full Commission on March 14, 2023. Revisions by staff included the streamlining of a couple of uses in the proposed table, ensuring that the code was enforceable, and organizing the ordinance to fit the land use code.

At the regular March 14, 2023 Commission meeting, the Commission reviewed the revised draft language and changed the draft ordinance during the public hearing substantially, causing the new proposed ordinance to arguably no longer meet its titular purpose—to protect anadromous waterbodies. Realistically, if this path is chosen, the title should just be repealed (it makes no sense to have a stream protection requirement that doesn't actually protect stream habitat). The Commission recommended its draft ordinance to the Assembly for approval.

### Discussion

We find ourselves needing to balance development ease and the preservation of fish habitat. The question that must be answered is, does Juneau value anadromous waterbodies, and if so, do we enact code that protects the fish habitat? If the answer to both these questions is yes, then we need an ordinance that is reasonable and enforceable.

The Commission in committee leaned for a middle path and at public hearing changed to a more pro-development path. Neither approach is wrong, the values of preservation and development are very different public purposes. But in its discussion, the Commission focused on the needs of development – which is a worthy public purpose, but not on the needs and purpose of fish habitat.

Recognizing the need to ease development restrictions where it is reasonable and provide for flexibility in the code is critical for development in Juneau. Given the vast differences between the Commission's draft ordinance and the ordinance drafted by Title 49 Committee and reviewed by staff, I asked staff for a third option, which addresses the main concern presented by developers over the years, and maintains our historic desire to protect fish habitat.

This third option provides for developers to work within the 50 foot buffer (from 35 feet to 50 feet) during construction, with the caveat that the area disturbed must be revegetated within one growing season with native plantings. The attached

draft ordinance was drafted by the Director, and reviewed by Law to ensure compliance with state statutes, and to avoid duplicate authority of state agencies.

### **Recommendation**

In summary, there are really three options available:

1. Do nothing
2. Repeal the Protection Ordinance
3. Adopt the moderated path developed by staff at direction of the Manager.

I recommend that the LHEDC recommend staff's most recent ordinance to the full Assembly for adoption. The draft ordinance maintains practical protection of anadromous waterbodies, while allowing development to occur in a portion of the outer buffer during construction by providing the work area necessary to construct outside the 50 foot buffer.

Given the work load and duties of the Assembly, I also recommend that you not devote too much time on this topic, this approach is a best balance of our interests. In closing, this process really illustrates the problem of volunteer group writing of code. I further recommend that we evolve to a practice of having the Planning Commission agree on philosophical directions and refrain from group writing. Group code writing is too hard, takes too long. Code writing should be left to the Department and the Attorneys.

**An Ordinance Amending the Sensitive ~~Habitat~~ Areas Requirements of the Land Use Code  
Related to Marine Mammal and Anadromous Waterbody Habitat Protections.**

**ARTICLE III. - SENSITIVE AREAS**

**49.70.310 Marine Mammal Habitat Protections.**

- (a) Development in the following areas is prohibited:
- (1) On Benjamin Island within the Steller sea lion habitat;
  - ~~(2) Within 50 feet from the ordinary high water mark of streams designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 2013 Update; and~~
  - ~~(3) Within 50 feet from the ordinary high water mark of lakeshores designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 2013 Update.~~
- (b) ~~In addition to the above requirements there shall be no disturbance in the following areas:~~
- ~~(1) Within 25 feet from the ordinary high water mark of stream corridors designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 2013 Update; and~~
  - ~~(2) Within 25 feet from the ordinary high water mark of lakeshores designated in Appendix B of the comprehensive plan of the City of Borough of Juneau, 2013 Update.~~
- (c) ~~The following developments or disturbances are exempt from the setback prohibitions of this section:~~
- ~~(1) Docks, bridges, culverts and public structures whose purpose is access to or across the stream or lake; and~~
  - ~~(2) Uses which must be in or adjacent to the stream or lake in order to function, such as mining activities, fish culturing, water supply intakes and similar uses.~~

~~Except for the setback area necessary for such developments or disturbances, the remaining setback shall be vegetated or revegetated, where feasible and prudent, and such vegetation or revegetation shall be kept or arranged to maximize shade on the stream or lake. A variance is required for any other development or disturbance in the setback prohibitions of this section.~~

(Serial No. 87-49, § 2, 1987; Serial No. 2008-30, § 3, 10-20-2008; Serial No. 2013-26(am), § 4, 11-4-2013, eff. 12-5-2013; Serial No. 2017-29, § 5, 1-8-2018, eff. 2-8-2018; Serial No. 2021-13, § 4, 9-13-2021, eff. 10-14-2021)

**49.70.320 Watersheds.**

Development in watersheds designated in the comprehensive plan of the City and Borough of Juneau, 2013 Update, shall not cause degradation of the existing water quality or ground water recharge capabilities of the site according to standards established by the state department of environmental conservation. Upon request of the director, the developer shall provide evidence of compliance by certification of a professional engineer.

(Serial No. 87-49, § 2, 1987; Serial No. 2008-30, § 4, 10-20-2008; Serial No. 2013-26(am), § 5, 11-4-2013, eff. 12-5-2013)

**49.70.330 Anadromous Habitat Protections.**

- (a) Development in the following areas is prohibited:
- (1) Within 50 feet from the ordinary high water mark of streams designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 2013 Update; and
  - (2) Within 50 feet from the ordinary high water mark of lakeshores designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 2013 Update.
- (b) In addition to the above requirements there shall be no disturbance in the following areas:
- (1) Within 25 feet from the ordinary high water mark of stream corridors designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 2013 Update; and
  - (2) Within 25 feet from the ordinary high water mark of lakeshores designated in Appendix B of the comprehensive plan of the City of Borough of Juneau, 2013 Update.
- (c) The following developments or disturbances are exempt from the setback prohibitions of this section:
- (1) Docks, bridges, culverts and public structures whose purpose is access to or across the stream or lake; and
  - (2) Uses which must be in or adjacent to the stream or lake in order to function, such as mining activities, fish culturing, water supply intakes and similar uses; and,
  - (3) During construction of a development, work may be conducted within the 35 foot to 50 foot buffer in order to construct a permitted project.
  - (4) The following standards shall apply:
    - (A) Prior to issuance of a building or grading permit, the developer must submit a vegetation or revegetation plan to the director for approval.
    - (B) Such vegetation or revegetation shall be kept or arranged to maximize shade on the stream or lake.
    - (C) The area disturbed shall be vegetated with native species according to the Alaska Department of Fish and Game's Stream Revegetation and Protection: A Guide for Alaska.
    - (D) Except for the setback area necessary for such developments or disturbances, the remaining setback shall be vegetated or revegetated within one growing season.

~~A variance is required for any other development or disturbance in the setback prohibitions of this section.~~



**Planning Commission**

(907) 586-0715

PC\_Comments@juneau.org

[www.juneau.org/community-development/planning-commission](http://www.juneau.org/community-development/planning-commission)

155 S. Seward Street • Juneau, AK 99801

**PLANNING COMMISSION  
NOTICE OF RECOMMENDATION**

Date: March 17, 2023  
Case No.: AME20170001

City and Borough of Juneau  
City and Borough Assembly  
155 South Seward Street  
Juneau, AK 99801

Proposal: Planning Commission Recommendation to the City and Borough Assembly regarding a text amendment to CBJ 49.70.310, Habitat, to revise the Habitat Ordinance

Property Address: Borough-wide

Legal Description: n/a

Parcel Code Number: n/a

Hearing Date: March 14, 2023

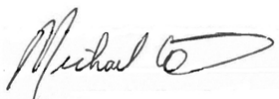
The Planning Commission, at its regular public meeting, amended the analysis and findings listed in the attached memorandum dated March 2, 2023, and recommended that the City and Borough Assembly adopt staff's recommendation, to revise the anadromous waterbodies ordinance as amended.

Attachments: March 2, 2023 memorandum from Teri Camery, Community Development, to the CBJ Planning Commission regarding AME20170001

This Notice of Recommendation constitutes a recommendation of the CBJ Planning Commission to the City and Borough Assembly. Decisions to recommend an action are not appealable, even if the recommendation is procedurally required as a prerequisite to some other decision, according to the provisions of CBJ 01.50.020 (b).




City and Borough Assembly  
Case No.: AME2017 0001  
March 17, 2023  
Page 2 of 2



Michael LeVine, Chair  
Planning Commission

May 18, 2023

Date



Filed With City Clerk

May 18, 2023

Date

**cc: Plan Review**

**NOTE:** The Americans with Disabilities Act (ADA) is a federal civil rights law that may affect this recommended text amendment. ADA regulations have access requirements above and beyond CBJ - adopted regulations. Contact an ADA - trained architect or other ADA trained personnel with questions about the ADA: Department of Justice (202) 272-5434, or fax (202) 272-5447, NW Disability Business Technical Center (800) 949-4232, or fax (360) 438-3208.

Presented by:  
Presented:  
Drafted by:

**ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA**

Serial No. 2022-46 PC2

**An Ordinance Amending the Sensitive Habitat Area Requirements of the  
Land Use Code Related to Anadromous Waterbodies.**

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

**Section 1. Classification.** This ordinance is of a general and permanent nature and shall become a part of the City and Borough of Juneau Municipal Code.

**Section 2. Amendment of Article.** Article III of CBJC 49.70 is amended as follows:

**Article III. Sensitive Habitat Areas**

**49.70.310 Marine Mammal Habitat Protections.**

(a) Development in the following areas is prohibited:

- (1) On Benjamin Island within the Steller sea lion habitat.

**49.70.320 Watersheds.**

Development in watersheds designated in the comprehensive plan of the City and Borough of Juneau, 2013 Update, shall not cause degradation of the existing water quality or ground water recharge capabilities of the site according to standards established by the state department of environmental conservation. Upon request of the director, the developer shall provide evidence of compliance by certification of a professional engineer.

**Commented [JM1]:** No changes recommended at this time; this is existing code

**49.70.330 Anadromous waterbodies.**

(a) Purpose. The purpose of this section is to protect and preserve anadromous fish habitat through:

- (1) Regulating alteration and mitigating disturbances to anadromous fish habitat buffers;
- (2) Preserving riparian habitat and restricting the removal of riparian vegetation;
- (3) Controlling pollution sources;
- (4) Prohibiting certain uses and structures detrimental to anadromous fish habitat;
- (5) Decreasing erosion, sedimentation, and damage to anadromous fish habitat buffers; and
- (6) Regulating access to and within the anadromous fish habitat buffer.

(b) Applicability. This section applies to anadromous waterbodies listed in the most recent Alaska Department of Fish and Game *Atlas and Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes*.

(c) Establishment of buffers. Waterbodies listed in the *Atlas and Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes* shall have an inner buffer measuring from 0 to 25 feet adjacent to the waterbody, and an outer buffer measuring from 25 feet to 50 feet

The following standards ~~guide application of~~ determine the buffer requirements:

- (1) The buffer shall be measured by the horizontal distance from the Ordinary High Water Mark (OHWM), as determined by a professional land surveyor licensed in the State of Alaska.

(2) On shoreline properties, the transition point from the anadromous fish habitat buffer to the zero setback of tidewater shall be at the point where mean high water and ordinary high water intersect, as determined by a ~~professional~~ land surveyor licensed in the State of Alaska.

~~(4)~~ Vegetation that overhangs or overlaps the zero to 25 foot buffer or the 25 to 50 foot buffer shall follow the regulation applicable to the primary trunk or stalk of the vegetation, whichever is most specific.

*(d) Anadromous fish habitat permit.* Activity within the inner (0 to 25 feet) or outer (25 to 50 feet) buffer requires an anadromous fish habitat permit, unless otherwise exempted by this section.

(1) The following uses are exempt from obtaining an anadromous fish habitat permit:

(A) Placement of fish weirs by a resource agency;

(B) Placement of water quality or water quantity monitoring equipment by a resource agency;

(C) Docks, bridges, culverts, and public ~~or private~~ structures whose purpose is access to or across the stream or lake;

(D) Uses which must be in or adjacent to the stream in order to function, such as aquaculture, water supply intakes, or similar uses; or

(E) Exploration and mining activities complying with CBJC 49.65 Article I that must be in or adjacent to the anadromous stream in order to function.

(2) The following uses are prohibited in the inner and outer buffer:

(A) Storage of fuel;

(B) Storage of explosives; or

(C) Storage of other hazardous materials.

(e) ~~Listed uses~~. There is adopted the table of permissible uses in anadromous waterbody buffers, table 49.70.330340. The uses permitted in ~~an~~ anadromous ~~waterbodies~~ ~~waterbody~~ habitat buffers shall be determined through the following table of permissible uses by locating the intersection of a horizontal, or use axis and a vertical, or zone axis. The conditions and procedures applicable to the use in the buffer thus located shall be as indicated thereat by the digits "1," or "3" as more fully set out in this section. The absence of a digit at the intersection of use and zone axes means that the identified use is not permitted in the identified buffer.

**Commented [JM2]:** Com m ission recommends streamlining this language

(1) When used in conjunction with a particular use in the table of permissible uses in anadromous waterbody buffers, the number "1" indicates that the use requires department approval pursuant to chapter 49.15, article III, in conjunction with the issuance of an anadromous ~~fish~~ habitat permit. The use is permissible in the buffer, but limited conditions may be attached to the approval.

(2) The number "3" indicates the use requires an anadromous ~~fish~~ habitat permit from the commission. The commission may approve, deny, or approve with condition(s) to ensure the compatibility of the proposed use to this title.

A combination of digits such as "1, 3" indicates that the approval procedure for the identified use in the identified buffer will vary depending on whether the project is a minor or major activity.

~~(1) Uses listed with the "1" indicate the use requires department approval.(2) Uses listed with a "3" indicate the use requires commission approval.~~

1  
2 (2) Uses listed with the “1, 3” indicate the use follows the associated development’s approval  
3 process. If approval of the associated development requires commission approval, one  
4 conditional use permit will address the development application comprehensively.  
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Table of Permissible Uses in Anadromous Waterbody Buffers 49.70.340

		Anadromous Waterbodies Buffers	
Use Description		Inner Buffer (zero to 25 feet)	Outer Buffer (25 to 50 feet)
1.0	Bank, buffer stabilization or restoration	1, 3	1, 3
2.0	Removal of non-native invasive plant species	1, 3	1, 3
3.0	Stormwater management to improve water quality or water quantity	1, 3	1, 3
4.0	Removal of trees that present an immediate and direct threat of falling onto a structure or vehicle.	1, 3	1, 3
5.0	Removal of vegetation, including limbing of trees, for viewshed or light enhancement		3
6.0	Grading, <del>or</del> vegetation removal, <del>or</del> placement of utilities associated with construction of a development	<u>3</u>	1, 3
<del>7.0</del>	<del>Bridges, utilities, and related public and private infrastructure, including culverts</del>	<del>1, 3</del>	<del>1, 3</del>
8.0	Installation of a fence	3	1
9.0	Trail construction for accessing or crossing a waterbody	1, 3	1, 3
<u>10.0</u>	<u>Trail maintenance for accessing or crossing a waterbody</u>	<u>1, 3</u>	<u>1, 3</u>
<u>11.0</u>	Trail construction and trail maintenance parallel to a waterbody		1, 3
12.0	Stream channelization or relocation of a stream that impacts anadromous fish habitat buffer	3	3
<del>12.0</del> <u>13.0</u>	Uses not listed, or not otherwise prohibited	3	3

(f) Minor anadromous ~~fish habitat activity~~ application requirements.

(1) Application requirements. The developer must submit one copy of the completed application and permit fee, including:

- (A) A graphic description of the property and all property boundaries to scale;
- (B) A site plan drawn to scale depicting the location of the proposed project on the lot;
- (C) A narrative statement describing the proposed activity explaining why the activity must be located within the inner or outer buffer, potential impacts to anadromous fish habitat, and an explanation of conformance with the Anadromous Fish Habitat Vegetation Standards (49.70.350), and the Anadromous Fish Habitat Best Management Practices (49.70.360); and
- (D) Additional information as determined necessary by the director.

(2) Director determinations. The director reviews anadromous fish habitat permit applications if the activity would likely only cause minimal impacts in the buffer. The director shall review the application, consult with the developer, and approve and unless:

- (A) The application is incomplete; or
- (B) ~~The Director determines that the outcome of the proposed activity or the cumulative effects of activity or development in a buffer would likely cause more than minimal impacts in the buffer after project completion, the application shall be subject to commission review~~The director determines the proposed activity, series of applications, or the potential cumulative effects of activity or development in or near a buffer would likely cause more than minimal impacts in the buffer, the application(c) shall be subject to commission review; or



(C) The application does not demonstrate compliance with the Anadromous Fish Habitat Vegetation Standards (49.70.350), and the Anadromous Fish Habitat Best Management Practices (49.70.360); or

(D) The activity as proposed will not comply with one or more requirements of this title.

(g) Major anadromous fish habitat activity requirements. The commission, ~~through the~~ conditional use permit process, ~~reviews all~~ applications that could likely cause more than minimal impacts in the buffer as determined by the director.

(1) Pre-application conference. Prior to submission of an application, the developer shall meet with the director for the purpose of discussing the site, the proposed activity, and the procedure. It is the intent of this section to provide for an exchange of general and preliminary information only and no statement by either the developer or the director shall be regarded as binding or authoritative for purposes of this code.

(2) Submission. The developer shall submit to the director one copy of the completed permit application with supporting materials and permit fee, including:

- (A) A graphic description of the property and all property boundaries to scale;
- (B) A site plan drawn to scale of existing conditions, including existing topography, drainage features, structures, significant natural and artificial conditions of the land, and vegetation; and
- (C) A narrative statement describing:

(i) The proposed activity and explaining why the activity must be located within the inner and / or outer buffer;

(ii) Potential impacts to anadromous fish habitat;

(iii) Explanation of conformance with the [Anadromous Fish Habitat Vegetation Standards \(49.70.350\)](#), and the [Anadromous Fish Habitat Best Management Practices \(49.70.360\)](#);

(iv) Anticipated temporary and/or permanent changes to habitat resulting from proposed uses and activities;

(v) Existing species of vegetation and proposed species to be used for revegetation;

(vi) Schedule for activity, removal of vegetation, revegetation, and the method by which the activity shall be conducted, in conformance with the [Anadromous Fish Habitat Vegetation Standards \(49.70.350\)](#), and the [Anadromous Fish Habitat Best Management Practices \(49.70.360\)](#);

(vii) Maintenance schedule, if applicable; and

(viii) Additional information as determined by the director.

(3) Director's review procedure.

(A) The director shall ~~endeavor to~~ determine whether the application accurately reflects the developer's ~~intentions~~ [goals](#), shall advise the developer whether or not the application is acceptable, and, if it is not, what corrective action may be taken.

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2 (B) After accepting the application, the director shall schedule it for a hearing before  
3 the commission and shall give notice to the developer and the public in accordance  
4 with 49.15.230.

5 (C) The director shall forward the application to the commission together with a  
6 report setting forth the director's recommendation for approval or denial, with or  
7 without conditions, and the reasons therefore. The director shall review the  
8 application, consult with the developer, and make recommendations on the following  
9 issues:

- 10  
11 (i) Whether the application is complete;  
12 (ii) Whether the application demonstrates conformance with the Anadromous  
13 Fish Habitat Vegetation Standards (49.70.350), and the Anadromous Fish  
14 Habitat Best Management Practices (49.70.360); and  
15 (iii) Whether the activity as proposed will comply with the requirements of  
16 this title.

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18 (D) Copies of the application or the relevant portions thereof shall be transmitted to  
19 interested agencies as specified on a list maintained by the director for that purpose.  
20 Referral agencies shall be invited to respond within 15 days unless an extension is  
21 requested and granted in writing for good cause by the director.

22 (E) Even if the proposed activity complies with all the requirements of this title and  
23 all recommended conditions of approval, the director may nonetheless recommend  
24 denial of the application if it is found that the activity:

- 25 (i) Will materially endanger the public health or safety;

- (ii) Will substantially decrease the value of or be out of harmony with property in the neighboring area; or
- (iii) Will not be in general conformity with the land use plan, thoroughfare plan, or other officially adopted plans; or
- (iv) Will not comply with the ~~Anadromous Fish Habitat Vegetation Standards~~ (49.70.350), and the ~~Anadromous Fish Habitat Best Management Practices~~ (49.70.360).

(4) Review of director's determinations.

(A) At the hearing on the anadromous fish habitat permit, the commission shall review the director's report to consider:

- (i) Whether the proposed activity is appropriate according to this anadromous fish habitat protection section;
- (ii) Whether the application is complete; and
- (iii) Whether the activity as proposed will comply with the other requirements of this title.

(B) The ~~planning~~ commission shall adopt the director's determination on each item set forth in subsection (3) unless it finds, by a preponderance of the evidence, that the director's determination was in error, and states its reasoning for each finding with particularity.

(5) ~~Planning Commission determinations.~~ Even if the ~~planning~~ commission adopts the director's determinations pursuant to subsection (3)(C) of this section, it may nonetheless

1  
2 deny or condition the permit if it concludes, based upon its own independent review of the  
3 information submitted at the hearing, that the activity will more probably than not:

4 (A) Materially endanger the public health or safety;

5 (B) Substantially decrease the value of or be out of harmony with property in the  
6 neighboring area; or

7 (C) Lack general conformity with the comprehensive plan, thoroughfare plan, or  
8 other officially adopted plans; or

9 (D) Will not comply with the [Anadromous Fish Habitat Vegetation Standards](#)  
10 [\(49.70.350\)](#), and the [Anadromous Fish Habitat Best Management Practices](#)  
11 [\(49.70.360\)](#).

12  
13 (h) *Emergency temporary permits.*

14 (1) The director may issue an emergency anadromous fish habitat permit, to protect life and  
15 property from imminent danger or to restore, repair, or maintain public works, utilities, or  
16 services destroyed, damaged, or interrupted by the emergency providing that:

17 (A) The emergency anadromous fish habitat permit shall only authorize the  
18 minimum amount of work required to mitigate the emergency situation and any  
19 additional work shall follow applicable permitting procedures set forth in this title;  
20 and

21 (B) Work shall be conducted using [the Anadromous Fish Habitat Best Management](#)  
22 [Practices \(49.70.360\)](#) to ensure that any adverse effect on the anadromous water body  
23 and buffers is minimized.

24  
25 (2) The emergency anadromous fish habitat application shall include the following:

(A) A description of the proposed activity;

(B) A description of the emergency; and

(C) A narrative describing why the activity is necessary to protect life and property from imminent danger or to restore, repair, or maintain public works, utilities, or services destroyed, damaged, or interrupted by the emergency.

(3) Conditions of approval. Conditions may be attached to emergency anadromous fish habitat permits to comply with this chapter. A final report that includes the plans and specifications for the work that was completed must be submitted to the department within 60 days of the date of the emergency. The director may require mitigation to repair damage to the anadromous fish habitat and ensure conformance with the section. All emergency work must be completed within two weeks of the issuance of the emergency anadromous fish habitat permit.

**49.70.~~330~~ 350 Anadromous fish habitat vegetation standards.**

Riparian vegetation standards shall apply to all uses ~~or types of development~~ within the inner or outer anadromous fish habitat buffer. All uses ~~and types of development~~ within the inner and outer anadromous fish habitat buffer shall include a vegetation plan to maintain or restore the buffer to the following standards:

- (a) The vegetation plan shall consider a diversity of native species appropriate for the site conditions found in the ~~Recommended Plan List in Appendix E of the CBJ's Manual of Stormwater Best Management Practices (2010) and/or the Plant Species~~ Selection List in the [Alaska Department of Fish and Game's Stream Revegetation and Protection: A Guide for Alaska \(2005\)](#). The vegetation plan shall favor natural plant reclamation from neighboring plant communities when possible. If the site was considered to be in a natural state prior to the activity,

the area shall require revegetation with the same species. The plan shall also implement any standards from the Alaska Storm Water Guide, Landscaping and Lawn/Vegetation Management sections in the CBJ's Manual of Stormwater Best Management Practices (2010), identified by the director as applicable to the permitted development; and

(b) Uses and activities shall not introduce or redistribute invasive species. Development that includes removal of invasive species must include documentation that removal and disposal methods will not contribute to invasive species spread.

(c) A developer with a proposed anadromous fish habitat activity that does not comply with the Anadromous Fish Habitat Vegetation Standards (49.70.350), and the Anadromous Fish Habitat Best Management Practices (49.70.360) ~~Anadromous Fish Habitat Vegetation Standards~~ may apply for a non-administrative variance.

**49.70.340-360 Anadromous fish habitat best management practices.**

Anadromous Fish Habitat Best Management Practices shall apply to all uses ~~or types of activity~~ within the inner or outer buffer:

(a) Delineate and flag work limits prior to commencing any activities to preserve existing vegetation outside of the work area and minimize impacts to the buffer. To protect large trees near, but outside of, the work area, the boundary for the natural area to be preserved should be extended to the tree drip line to protect the root zone from damage. The work limits must remain clearly marked until all work is complete. Within the work limits, the disturbed area shall be limited to that required for construction including access. Complete or partial removal of and

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- damage to native vegetation shall be limited to the minimum necessary to achieve the project purpose;
- (b) When existing vegetation must be removed from the buffer, the buffer shall be revegetated with native plant species that are present or appropriate for that area within ~~one growing season~~24 months. The buffer shall be revegetated and such revegetation shall be kept or arranged to enhance fish habitat. Areas previously degraded by human activity shall be revegetated;
- (c) Erosion and sediment control best management practices shall be used during construction activities to protect waterbodies sediment deposition and turbidity due to adjacent soil disturbance activities. Selected BMPs must be implemented in accordance with the standards in the [Alaska Storm Water Guide](#);
- (d) All discharge material shall be free from toxic pollutants in toxic amounts as defined by state law;
- (e) Uses and activities shall implement measures to minimize pollutant discharges into the waterbody and buffer including but not limited to providing for water management, establishing staging, fueling, and maintenance areas outside of the buffer;
- (f) Structures allowed within the buffer must be constructed so as not to impede floodwaters or impede fish passage; and



~~(g) Developments must comply with the Alaska Storm Water Guide 2010 CBJ Manual of Stormwater Best Management Practices.~~

~~(h)~~(g) A developer with a proposed anadromous fish habitat activity that does not comply with the Anadromous Fish Habitat Vegetation Standards (49.70.350), and the Anadromous Fish Habitat Best Management Practices (49.70.360) may apply for a non-administrative variance.

**Section 3. Amendment of Section.** CBJC 49.80.120 is amended by adding the following definitions:

**49.80.120 Definitions.**

The following words, terms and phrases, when used in this title, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Anadromous fish means a fish or fish species that spends portions of its life cycle in both fresh and salt waters, entering fresh water from the sea to spawn and includes the anadromous forms of pacific trout and salmon of the genus *Oncorhynchus* (rainbow and cutthroat trout and chinook, coho, sockeye, chum and pink salmon), Arctic char, Dolly Varden, sheefish, smelts, lamprey, whitefish, and sturgeon.

Anadromous fish habitat means any area on which anadromous fish depend, directly or indirectly, during any stage of their life cycle, including but not limited to areas of spawning, rearing, food supply, overwintering, or migration.

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Anadromous waterbody means a river, stream, or lake, in its liquid or frozen state, its braided channels, distributaries, sloughs, backwaters, and estuaries, including the portion of the bed(s) and banks up to the ordinary high water mark, from its mouth to its specified upper limit as depicted in An Atlas to the Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fishes or listed in the Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fishes.

Bank restoration or buffer restoration means removal of debris, removal of abandoned machinery and vehicles, grading, stabilization of banks and related cleanup activities, and preservation or restoration of riparian vegetation

Best Management Practices (BMP) means systems of practices and management measures that:

- 1. Control soil loss and reduce water quality degradation caused by nutrients, animal waste, and toxins;
- 2. Control the movement of sediment and erosion caused by land alteration activities to protect water quality and slope stability;
- 3. Minimize adverse impacts to surface and groundwater quality, flow, and circulation patterns; and to the chemical, physical, and biological characteristics of waterbodies;
- 4. Minimize adverse impacts to the chemical, physical, and biological characteristics of a sensitive habitat critical area;
- 5. Protect trees and vegetation designated to be retained during and following site construction and use native plant species appropriate to the site for revegetation of disturbed areas; and

~~6. Monitor mitigation measures to ensure that functions and values impacted by a project are provided and maintained.~~

Emergency means a sudden unexpected occurrence, either the result of human or natural forces, necessitating immediate action to prevent or mitigate significant loss or damage to life, health, property, essential public services, or the environment.

Erosion means significant sloughing, washout, or discharge of soil arising from manmade or natural sources.

Stormwater management means the use of structural or non-structural practices designed to reduce stormwater runoff pollutant loads, discharge volumes, peak flow discharge rates, and other detrimental changes that decrease water quality or habitat, which conform to the Alaska Storm Water Guide, which conforms to the 2010 CBJ Manual of Stormwater Best Management Practices.

Surveillance equipment means equipment capable of capturing or recording data, including images, videos, photographs or audio.

Section 4. Amendment of Section. CBJC 49.85.100 is amended by adding the following fees:

(1)(D) Anadromous fish habitat permit \$150; fee is waived if applied for in conjunction with a development permit.

(3)(A)(vii) Anadromous fish habitat permit \$150. If the application is filed in conjunction with a major development permit the fee shall be reduced by 20 percent.

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**Section 4. Effective Date.** This ordinance shall be effective 30 days after its adoption.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, ~~2022~~2023.

Attest:

\_\_\_\_\_  
Beth A. Weldon, Mayor

\_\_\_\_\_  
Elizabeth J. McEwen, Municipal Clerk



**PLANNING COMMISSION STAFF REPORT**  
**TEXT AMENDMENT AME2017 0001**  
**HEARING DATE: MARCH 14, 2023**

(907) 586-0715


CDD\_Admin@juneau.org

www.juneau.org/community-development

155 S. Seward Street • Juneau, AK 99801

**DATE:** March 2, 2023

**TO:** Michael LeVine, Chair, Planning Commission

**BY:** Teri Camery, Senior Planner, CFM 

**THROUGH:** Jill Maclean, Director, AICP

**PROPOSAL:** A text amendment to CBJ 49.70.310, Habitat, to revise the stream buffer ordinance

**STAFF RECOMMENDATION:** Forward the proposed ordinance with a recommendation of APPROVAL to the Assembly.

**KEY CONSIDERATIONS FOR REVIEW:**

- Maintains 25 and 50 foot stream buffers;
- Clarifies uses allowed and prohibited within stream buffers; and
- Allows low-impact uses in the buffer with departmental review.

GENERAL INFORMATION	
<b>Applicant</b>	Community Development Department
<b>Initiated By</b>	Community Development Department
<b>Property Affected</b>	Borough-wide

LAND USE CODE AMENDED	
<b>49.70.310</b>	Habitat
<b>49.85</b>	Definitions

WORK SESSION DATES	
<b>Title 49 Committee</b>	September 2018; July 2021; October 2021; November 2021; December 2021; January 2022

**ALTERNATIVE ACTIONS:**

1. **Amend:** modify the proposed ordinance and recommend approval to the Assembly.
2. **Deny:** recommend denial of the proposed ordinance to the Assembly. Planning Commission must make its own findings.
3. **Continue:** continue the hearing to a later date if determined that additional information or analysis is needed to make a decision, or if additional testimony is warranted.

**ASSEMBLY ACTION REQUIRED:**

Assembly action is required for this text amendment. The Commission's recommendation will be forwarded to the assembly for final action.

**STANDARD OF REVIEW:**

- Quasi-legislative decision
- Requires five (5) affirmative votes for approval
- Code Provisions:
  - CBJ 49.10.170(d)

**The Commission shall hear and decide the case per CBJ 49.10.170(d) Planning Commission Duties.** *The commission shall make recommendations to the assembly on all proposed amendments to this title, zonings and rezoning, indicating compliance with the provisions of this title and the comprehensive plan.*

## **DISCUSSION**

### **Background –**

The proposed text amendment would retain the 0-25 foot and 25-50 foot buffers in current code, while clarifying uses and streamlining the review process for low-impact uses that can comply with standard best management practices and riparian vegetation standards.

The Title 49 Committee has reviewed the proposed language in five meetings.

Key elements of the ordinance include:

- Clarification on how the Ordinary High Water Mark is measured;
- Clarification on allowed and prohibited uses within the stream buffer;
- Establishment of an Anadromous Waterbody Permit;
- Establishment of minor development categories for low impact uses that may be approved at the director level; and major development categories for uses that may have a greater impact and may be approved by the Planning Commission

## **COMPLIANCE WITH TITLE 49**

### **CBJ 49.05.100 - Purpose and intent. The purpose and Intent of Title 49 Land Use Code is:**

*(1) To achieve the goals and objectives, and implement the policies, of the Juneau comprehensive plan, and coastal management program;*

*(2) To ensure that future growth and development in the City and Borough is in accord with the values of its residents;*

*(3) To identify and secure, for present and future residents, the beneficial impacts of growth while minimizing the negative impacts;*

*(4) To ensure that future growth is of the appropriate type, design and location, and is served by a proper range of public services and facilities such as water, sewage, and electrical distribution systems, transportation, schools, parks and other public requirements, and in general to promote public health, safety and general welfare;*

*(5) To provide adequate open space for light and air; and*

*(6) To recognize the economic value of land and encourage its proper and beneficial use.*

**TITLE 49** - The proposed text amendment complies with CBJ Title 49 Land Use Code. Additionally, the proposed amendment will not create any inconsistencies in Title 49.

Code Reference	Item	Summary
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49.05.100	Purpose Statement	The proposed text amendment complies with the purpose and intent of Title 49.
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### **COMPLIANCE WITH ADOPTED PLANS**

**2013 COMPREHENSIVE PLAN VISION:** *The City and Borough of Juneau is a vibrant State Capital that values the diversity and quality of its natural and built environments, creates a safe and satisfying quality of life for its diverse population, provides quality education and employment for its workers, encourages resident participation in community decisions and provides an environment to foster state-wide leadership.*

<b>2013 COMPREHENSIVE PLAN</b> The proposed text amendment is in compliance with the 2013 Comprehensive Plan.			
Chapter	Page No.	Item	Summary
7	78	Policy 7.1	<p>The proposed text amendment supports Policy 7.1 by protecting valuable anadromous stream habitat from the adverse impacts of urban development.</p> <p><i>Policy 7.1. TO PROTECT THE REGION’S SCENIC, ENVIRONMENTAL, AND ECONOMICALLY-VALUABLE NATURAL RESOURCES FROM THE ADVERSE IMPACTS OF URBAN DEVELOPMENT. DEVELOPMENT SHALL BE CONTROLLED CAREFULLY AND, IF NECESSARY, PROHIBITED IN NATURALLY HAZARDOUS AND ECOLOGICALLY-PRODUCTIVE OR SENSITIVE AREAS.</i></p>

### **AGENCY REVIEW**

An agency review period was not conducted. State and federal resource agencies provided significant input into early development of the ordinance, specifically regarding uses allowed in the buffers and regarding development of best management practices and vegetation standards.

### **PUBLIC COMMENTS**

Public Notice was provided in the March 3 and March 10, 2023 Juneau Empire Your Municipality section. No public comments have been received to date.

### **FINDINGS**

#### **1. Does the proposed text amendment comply with the Comprehensive Plan and other adopted plans?**

**Analysis:** The proposed amendment balances the varied Comprehensive Plan policies and is generally consistent with the overall vision.

**Finding:** **Yes.** The proposed text amendment complies with the 2013 Comprehensive Plan.

**2. Does the proposed text amendment comply with Title 49 – Land Use Code?**

**Analysis:** The proposed amendment was drafted with the purpose and intent of Title 49 taken into account. If approved as drafted, it will be consistent with the above purposes.

**Finding: Yes.** The proposed development complies with the purpose and intent of Title 49. Additionally, the proposed amendment does not create any inconsistencies within the code.

**RECOMMENDATION**

Staff recommends the Planning Commission adopt the Director's analysis and findings and make a recommendation to the Assembly to APPROVE the proposed text amendment to revise the stream buffer ordinance.

**STAFF REPORT ATTACHMENTS**

Item	Description
Attachment A	Proposed Ordinance



Presented by:  
Presented:  
Drafted by:

**ORDINANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA**  
**Serial No. 2022-46 PC1**

**An Ordinance Amending the Sensitive Habitat Area Requirements of the  
Land Use Code Related to Anadromous Waterbodies.**

BE IT ENACTED BY THE ASSEMBLY OF THE CITY AND BOROUGH OF JUNEAU, ALASKA:

**Section 1. Classification.** This ordinance is of a general and permanent nature and shall become a part of the City and Borough of Juneau Municipal Code.

**Section 2. Amendment of Article.** Article III of CBJC 49.70 is amended as follows:

**Article III. Sensitive Habitat Areas**

**49.70.310 Marine Mammal Habitat Protections.**

(a) Development in the following areas is prohibited:

- (1) On Benjamin Island within the Steller sea lion habitat;
- ~~(2) Within 50 feet from the ordinary high water mark of streams designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 2013 Update;~~
- ~~and~~
- ~~(3) Within 50 feet from the ordinary high water mark of lakeshores designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 2013 Update.~~

~~(b) In addition to the above requirements there shall be no disturbance in the following areas:~~

(1) ~~Within 25 feet from the ordinary high water mark of stream corridors designated in Appendix B of the comprehensive plan of the City and Borough of Juneau, 2013 Update;~~  
and

(2) ~~Within 25 feet from the ordinary high water mark of lakeshores designated in Appendix B of the comprehensive plan of the City of Borough of Juneau, 2013 Update.~~

(b) The following developments or disturbances are exempt from the setback prohibitions of this section:

(1) Docks, bridges, culverts and public structures whose purpose is access to or across the stream or lake; and

(2) Uses which must be in or adjacent to the stream or lake in order to function, such as mining activities, fish culturing, water supply intakes and similar uses.

Except for the setback area necessary for such developments or disturbances, the remaining setback shall be vegetated or revegetated, where feasible and prudent, and such vegetation or revegetation shall be kept or arranged to maximize shade on the stream or lake. ~~A variance is required for any other development or disturbance in the setback prohibitions of this section.~~

**49.70.315 Anadromous Fish Habitat Protections**

(a) Purpose. The purpose of this section is to protect and preserve anadromous fish habitat through:

- (1) Regulating alteration and mitigating disturbances to anadromous fish habitat buffers;
- (2) Preserving riparian habitat and restricting the removal of riparian vegetation;
- (3) Controlling pollution sources;

- (4) Prohibiting certain uses and structures detrimental to anadromous fish habitat;
- (5) Decreasing erosion, sedimentation, and damage to anadromous fish habitat buffers; and
- (6) Regulating access to and within the anadromous fish habitat buffer.

(b) Applicability. This section applies to anadromous waterbodies listed in the most recent Alaska Department of Fish and Game *Atlas and Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes*. It is the developer’s responsibility to prove that a waterbody is not anadromous in accordance with AS 16.05.871.

(c) Establishment of buffers. Waterbodies listed in the *Atlas and Catalog of Waters Important for the Spawning, Rearing, or Migration of Anadromous Fishes* shall have an inner buffer measuring from 0 to 25 feet adjacent to the waterbody, and an outer buffer measuring from 25 feet to 50 feet. The following standards guide application of the buffer requirements:

- (1) The buffer shall be measured by the horizontal distance from the Ordinary High Water Mark (OHWM), as determined by a professional land surveyor licensed in the State of Alaska.
- (2) On shoreline properties, the transition point from the anadromous fish habitat buffer to the zero setback of tidewater shall be at the point where mean high water and ordinary high water intersect, as determined by a professional land surveyor licensed in the State of Alaska.
- (3) Vegetation that overhangs the stream or overlaps the 0 to 25 foot inner buffer shall follow the regulation applicable to the inner buffer.

(4) Vegetation that overhangs or overlaps the 25 to 50 foot buffer shall follow the regulation applicable to the primary element or woody vegetation, whichever is most specific.

(d) Anadromous fish habitat permit. Activity within the inner (0 to 25 feet) or outer (25 to 50 feet) buffer requires an anadromous fish habitat permit, unless otherwise exempted by this section.

- (1) The following uses are exempt from obtaining an anadromous fish habitat permit:
- (A) Placement of fish weirs by a resource agency;
  - (B) Placement of water quality or water quantity monitoring equipment by a resource agency;
  - (C) Uses which must be in or adjacent to the stream in order to function, such as fish culturing, water supply intakes, or similar uses; or
  - (D) Exploration and mining activities complying with CBJC 49.65 Article I that must be in or adjacent to the anadromous stream in order to function.

- (2) The following uses are prohibited in the inner and outer buffer:
- (A) Storage of fuel;
  - (B) Storage of explosives; or
  - (C) Storage of other hazardous materials.

(e) Listed uses. There is adopted the table of permissible uses in anadromous fish habitat buffers, table 49.70.315. The uses permitted in an anadromous fish habitat buffer shall be determined through the following table of permissible uses by locating the intersection of a horizontal, or use axis and a vertical, or zone axis. The conditions and procedures applicable to the use in the buffer thus located shall be as indicated thereat by the digits "1," or "3" as more fully set out in this

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2 section. The absence of a digit at the intersection of use and zone axes means that the identified  
3 use is not permitted in the identified buffer.

4       (1) *Unlisted uses.* The permissibility of a use not listed shall be determined pursuant to  
5 section 49.20.320.

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7       (2) *Uses listed more than once.* Where a use might be classified under more than one category,  
8 the more specific shall control. If equally specific, the more restrictive shall control.

9       (3) When used in conjunction with a particular use in the table of permissible uses, the  
10 number "1" indicates that the use requires department approval pursuant to chapter 49.15,  
11 article III, in conjunction with the issuance of an anadromous fish habitat permit. The use  
12 is permissible in the buffer, but limited conditions may be attached to the approval.

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14       (4) The number "3" indicates the use requires an anadromous fish habitat permit from the  
15 commission. The commission may approve, deny, or approve with condition(s) to ensure the  
16 compatibility of the proposed use to this title.

17 A combination of digits such as "1, 3" indicates that the approval procedure for the identified use  
18 in the identified buffer will vary depending on whether the project is a minor or major activity.

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20       (1) If the project is a minor activity requiring a minor development permit, the first number  
21 of the combination shall indicate the applicable procedure.

22       (2) If the project is a major activity requiring a major development permit or is in conjunction  
23 with a major activity, the second number shall indicate the applicable procedure.  
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Table of Permissible Uses in Anadromous Waterbodies Buffers 49.70.315

		Anadromous Waterbodies Buffers	
Use Description		Inner Buffer (zero to 25 feet)	Outer Buffer (25 to 50 feet)
1.0	Bank, buffer stabilization or restoration	1, 3	1, 3
2.0	Removal of non-native invasive plant species	1, 3	1, 3
3.0	Stormwater management to improve water quality or water quantity	1, 3	1, 3
4.0	Removal of trees that present an immediate and direct threat of falling onto a structure or vehicle.	1, 3	1, 3
5.0	Removal of vegetation, including limbing of trees, for viewshed or light enhancement		3
6.0	Grading, vegetation removal, or placement of utilities associated with construction of a development		1, 3
7.0	Bridges, utilities, and related public and private infrastructure, including culverts	1, 3	1, 3
8.0	Installation of a fence	3	1
9.0	Trail construction or trail maintenance for accessing or crossing a waterbody	1, 3	1, 3
10.0	Trail construction and trail maintenance parallel to a waterbody		1, 3
11.0	Stream channelization or relocation of a stream that impacts anadromous fish habitat buffer	3	3
12.0	Uses not listed, or not otherwise prohibited	3	3

(f) Minor anadromous fish habitat activity requirements.

(1) Application requirements. The developer must submit one copy of the completed application and permit fee, including:

- (A) A graphic description of the property and all property boundaries to scale;
- (B) A site plan drawn to scale depicting the location of the proposed project on the lot;
- (C) A narrative statement describing the proposed activity explaining why the activity must be located within the inner or outer buffer, potential impacts to anadromous fish habitat, and an explanation of conformance with the Anadromous Fish Habitat Best Management Practices and Anadromous Fish Habitat Vegetation Standards, 49.70.330; and
- (D) Additional information as determined necessary by the director.

(2) Director determinations. The director reviews anadromous fish habitat permit applications if the activity would likely only cause minimal impacts in the buffer. The director shall review the application, consult with the developer, and approve an unless:

- (A) The application is incomplete; or
- (B) The director determines the proposed activity, series of applications, or the potential cumulative effects of activity or development in or near a buffer would likely cause more than minimal impacts in the buffer, the application(s) shall be subject to commission review; or
- (C) The application does not demonstrate compliance with the Anadromous Fish Habitat Best Management Practices and the Anadromous Fish Habitat Vegetation Standards, 49.70.330; or

(D) The activity as proposed will not comply with one or more requirements of this title

(g) Major anadromous fish habitat activity requirements. The commission—through the conditional use permit process—reviews all applications that could likely cause more than minimal impacts in the buffer as determined by the director.

(1) Pre-application conference. Prior to submission of an application, the developer shall meet with the director for the purpose of discussing the site, the proposed activity, and the procedure. It is the intent of this section to provide for an exchange of general and preliminary information only and no statement by either the developer or the director shall be regarded as binding or authoritative for purposes of this code.

(2) Submission. The developer shall submit to the director one copy of the completed permit application with supporting materials and permit fee, including:

- (A) A graphic description of the property and all property boundaries to scale;
- (B) A site plan drawn to scale of existing conditions, including existing topography, drainage features, structures, significant natural and artificial conditions of the land, and vegetation; and
- (C) A narrative statement describing:
  - (i) The proposed activity and explaining why the activity must be located within the inner and / or outer buffer;
  - (ii) Potential impacts to anadromous fish habitat;



- (iii) Explanation of conformance with the Anadromous Fish Habitat Best Management Practices and Anadromous Fish Habitat Vegetation Standards in 49.70.330;
- (iv) Anticipated temporary and/or permanent changes to habitat resulting from proposed uses and activities;
- (v) Existing species of vegetation and proposed species to be used for revegetation;
- (vi) Schedule for activity, removal of vegetation, revegetation, and the method by which the activity shall be conducted, in conformance with the Anadromous Fish Habitat Best Management Practices and Anadromous Fish Habitat Vegetation Standards pursuant to 49.70.330;
- (vii) Maintenance schedule, if applicable; and
- (viii) Additional information as determined by the director.

(3) Director’s review procedure.

- (A) The director shall endeavor to determine whether the application accurately reflects the developer's intentions, shall advise the developer whether or not the application is acceptable, and, if it is not, what corrective action may be taken.
- (B) After accepting the application, the director shall schedule it for a hearing before the commission and shall give notice to the developer and the public in accordance with 49.15.230.
- (C) The director shall forward the application to the commission together with a report setting forth the director's recommendation for approval or denial, with or

1  
2 without conditions, and the reasons therefore. The director shall review the  
3 application, consult with the developer, and make recommendations on the following  
4 issues:

- 5 (i) Whether the application is complete;
- 6 (ii) Whether the application demonstrates conformance with the Anadromous  
7 Fish Habitat Best Management Practices and the Anadromous Fish Habitat  
8 Vegetation Standards, 49.70.330; and
- 9 (iii) Whether the activity as proposed will comply with the requirements of  
10 this title.

11  
12  
13 (D) Copies of the application or the relevant portions thereof shall be transmitted to  
14 interested agencies as specified on a list maintained by the director for that purpose.  
15 Referral agencies shall be invited to respond within 15 days unless an extension is  
16 requested and granted in writing for good cause by the director.

17 (E) Even if the proposed activity complies with all the requirements of this title and  
18 all recommended conditions of approval, the director may nonetheless recommend  
19 denial of the application if it is found that the activity:

- 20 (i) Will materially endanger the public health or safety;
- 21 (ii) Will substantially decrease the value of or be out of harmony with property  
22 in the neighboring area; or
- 23 (iii) Will not be in general conformity with the land use plan, thoroughfare  
24 plan, or other officially adopted plans; or  
25

(iv) Will not comply with the Anadromous Fish Habitat Best Management Practices and the Anadromous Fish Habitat Vegetation Standards, 49.70.330.

(4) Review of director’s determinations.

(A) At the hearing on the anadromous fish habitat permit, the commission shall review the director's report to consider:

- (i) Whether the proposed activity is appropriate according to this anadromous fish habitat protection section;
- (ii) Whether the application is complete; and
- (iii) Whether the activity as proposed will comply with the other requirements of this title.

(B) The planning commission shall adopt the director's determination on each item set forth in subsection (3) unless it finds, by a preponderance of the evidence, that the director's determination was in error, and states its reasoning for each finding with particularity.

(5) Planning Commission determinations. Even if the planning commission adopts the director's determinations pursuant to subsection (3)(C) of this section, it may nonetheless deny or condition the permit if it concludes, based upon its own independent review of the information submitted at the hearing, that the activity will more probably than not:

- (A) Materially endanger the public health or safety;
- (B) Substantially decrease the value of or be out of harmony with property in the neighboring area; or

- 1
- 2       (C) Lack general conformity with the comprehensive plan, thoroughfare plan, or
- 3       other officially adopted plans; or
- 4       (D) Will not comply with the Anadromous Fish Habitat Best Management Practices
- 5       and the Anadromous Fish Habitat Vegetation Standards, 49.70.330.

6

7 (h) Emergency temporary permits.

8       (1) The director may issue an emergency anadromous fish habitat permit, to protect life and

9       property from imminent danger or to restore, repair, or maintain public works, utilities, or

10       services destroyed, damaged, or interrupted by the emergency providing that:

- 11           (A) The emergency anadromous fish habitat permit shall only authorize the
- 12           minimum amount of work required to mitigate the emergency situation and any
- 13           additional work shall follow applicable permitting procedures set forth in this title;
- 14           and
- 15           (B) Work shall be conducted using Best Management Practices to ensure that any
- 16           adverse effect on the anadromous water body and buffers is minimized.

17

18       (2) The emergency anadromous fish habitat application shall include the following:

- 19           (A) A description of the proposed activity;
- 20           (B) A description of the emergency; and
- 21           (C) A narrative describing why the activity is necessary to protect life and property
- 22           from imminent danger or to restore, repair, or maintain public works, utilities, or
- 23           services destroyed, damaged, or interrupted by the emergency.

24       (3) Conditions of approval. Conditions may be attached to emergency anadromous fish

25       habitat permits to comply with this chapter. A final report that includes the plans and

specifications for the work that was completed must be submitted to the department within

60 days of the date of the emergency. The director may require mitigation to repair damage to the anadromous fish habitat and ensure conformance with the section. All emergency work must be completed within two weeks of the issuance of the emergency anadromous fish habitat permit.

**49.70.320 Watersheds.**

Development in watersheds designated in the comprehensive plan of the City and Borough of Juneau, 2013 Update, shall not cause degradation of the existing water quality or ground water recharge capabilities of the site according to standards established by the state department of environmental conservation. Upon request of the director, the developer shall provide evidence of compliance by certification of a professional engineer.

**49.70.330 Anadromous fish Habitat Vegetation Standards.**

Riparian vegetation standards shall apply to all uses or types of development within the inner or outer anadromous fish habitat buffer. All uses and types of development within the inner and outer anadromous fish habitat buffer shall include a vegetation plan to maintain or restore the buffer to the following standards:

- (a) The vegetation plan shall consider a diversity of native species appropriate for the site conditions found in the Plant Selection List in the Alaska Department of Fish and Game’s Stream Revegetation and Protection: A Guide for Alaska (2005). The vegetation plan shall favor natural plant reclamation from neighboring plant communities when possible. If the site was considered to be in a natural state prior to the activity, the area shall require revegetation with the same

species. The plan shall also implement any standards from the Landscaping and Lawn/Vegetation Management sections in the CBJ's Manual of Stormwater Best Management Practices (2010), identified by the director as applicable to the permitted development; and

(b) Uses and activities shall not introduce or redistribute invasive species. Development that includes removal of invasive species must include documentation that removal and disposal methods will not contribute to invasive species spread.

(c) A developer with a proposed anadromous fish habitat activity that does not comply with the Anadromous Fish Habitat Vegetation Standards may apply for an administrative variance.

**49.70.340 Anadromous Fish Habitat Best Management Practices**

Anadromous Fish Habitat Best Management Practices shall apply to all uses or types of activity within the inner or outer buffer:

(a) Delineate and flag work limits prior to commencing any activities to preserve existing vegetation outside of the work area and minimize impacts to the buffer. To protect large trees near, but outside of, the work area, the boundary for the natural area to be preserved should be extended to the tree drip line to protect the root zone from damage. The work limits must remain clearly marked until all work is complete. Within the work limits, the disturbed area shall be limited to that required for construction including access. Complete or partial removal of and damage to native vegetation shall be limited to the minimum necessary to achieve the project purpose;

(b) When existing vegetation must be removed from the buffer, the buffer shall be revegetated with native plant species that are present or appropriate for that area within one growing season. The buffer shall be revegetated and such revegetation shall be kept or arranged to enhance fish habitat. Areas previously degraded by human activity shall be revegetated;

(c) Erosion and sediment control Best Management Practices shall be used during construction activities to protect waterbodies sediment deposition and turbidity due to adjacent soil disturbance activities. Selected BMPs must be implemented in accordance with the standards in the Alaska Storm Water Guide;

(d) All discharge material shall be free from toxic pollutants in toxic amounts as defined by state law;

(e) Uses and activities shall implement measures to minimize pollutant discharges into the waterbody and buffer including but not limited to providing for water management, establishing staging, fueling, and maintenance areas outside of the buffer;

(f) Structures allowed within the buffer must be constructed so as not to impede floodwaters or impede fish passage; and

(g) Developments must comply with the 2010 CBJ Manual of Stormwater Best Management Practices.

(h) A developer with a proposed anadromous fish habitat activity that does not comply with the Anadromous Fish Habitat Best Management Practices may apply for an administrative variance.

**Section 3. Amendment of Section.** CBJC 49.80.120 is amended by adding the following definitions:

**49.80.120 Definitions.**

The following words, terms and phrases, when used in this title, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Anadromous fish means a fish or fish species that spends portions of its life cycle in both fresh and salt waters, entering fresh water from the sea to spawn and includes the anadromous forms of pacific trout and salmon of the genus Oncorhynchus (rainbow and cutthroat trout and chinook, coho, sockeye, chum and pink salmon), Arctic char, Dolly Varden, sheefish, smelts, lamprey, whitefish, and sturgeon.

Anadromous fish habitat means any area on which anadromous fish depend, directly or indirectly, during any stage of their life cycle, including but not limited to areas of spawning, rearing, food supply, overwintering, or migration.

Anadromous waterbody means a river, stream, or lake, in its liquid or frozen state, its braided channels, distributaries, sloughs, backwaters, and estuaries, including the portion of the bed(s) and banks up to the ordinary high water mark, from its mouth to its specified upper limit as depicted in An Atlas to the Catalog of Waters Important for Spawning, Rearing or Migration of



Anadromous Fishes or listed in the Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fishes.

Bank restoration or buffer restoration means removal of debris, removal of abandoned machinery and vehicles, grading, stabilization of banks and related cleanup activities, and preservation or restoration of riparian vegetation

Best Management Practices (BMP) means systems of practices and management measures that:

1. Control soil loss and reduce water quality degradation caused by nutrients, animal waste, and toxins;
2. Control the movement of sediment and erosion caused by land-alteration activities to protect water quality and slope stability;
3. Minimize adverse impacts to surface and groundwater quality, flow, and circulation patterns; and to the chemical, physical, and biological characteristics of waterbodies;
4. Minimize adverse impacts to the chemical, physical, and biological characteristics of a sensitive habitat critical area;
5. Protect trees and vegetation designated to be retained during and following site construction and use native plant species appropriate to the site for revegetation of disturbed areas; and

6. Monitor mitigation measures to ensure that functions and values impacted by a project are provided and maintained.

Emergency means a sudden unexpected occurrence, either the result of human or natural forces, necessitating immediate action to prevent or mitigate significant loss or damage to life, health, property, essential public services, or the environment.

Erosion means significant sloughing, washout, or discharge of soil arising from manmade or natural sources.

Stormwater management means the use of structural or non-structural practices designed to reduce stormwater runoff pollutant loads, discharge volumes, peak flow discharge rates, and other detrimental changes that decrease water quality or habitat.

Surveillance equipment means equipment capable of capturing or recording data, including images, videos, photographs or audio.

**Section 4. Effective Date.** This ordinance shall be effective 30 days after its adoption.

Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Beth A. Weldon, Mayor

Attest:

\_\_\_\_\_  
Elizabeth J. McEwen, Municipal Clerk

Agenda  
Planning Commission  
Regular Meeting  
CITY AND BOROUGH OF JUNEAU  
Michael LeVine, Chairman  
March 14, 2023

I. LAND ACKNOWLEDGEMENT – Read by Commissioner Cole.

We would like to acknowledge that the City and Borough of Juneau is on Tlingit land, and wish to honor the indigenous people of this land. For more than ten thousand years, Alaska Native people have been and continue to be integral to the well-being of our community. We are grateful to be in this place, a part of this community, and to honor the culture, traditions, and resilience of the Tlingit people. Gunalchéesh!

II. ROLL CALL

Michael LeVine, Chairman, called the Regular Meeting of the City and Borough of Juneau (CBJ) Planning Commission (PC), held in Assembly Chambers of the Municipal Building, virtually via Zoom Webinar, and telephonically, to order at 7:07 p.m.

Commissioners present: Commissioners present in Chambers – Michael LeVine, Chairman; Mandy Cole, Vice Chair; Travis Arndt, Clerk; Erik Pedersen, Vice Clerk; Matthew Bell; Paul Voelckers; Adam Brown; David Epstein

Commissioners present via video conferencing – n/a

Commissioners absent: Nina Keller

Staff present: Jill Maclean, CDD Director; Teri Camery, Senior Planner; Emily Suarez, Planner II; Ilsa Lund, CDD Administrative Assistant; Lily Hagerup, CDD Administrative Assistant; Sherri Layne, Law Assistant Municipal Attorney

Staff present via video conferencing – None

Assembly members: None

III. REQUEST FOR AGENDA CHANGES AND APPROVAL OF AGENDA - None

IV. APPROVAL OF MINUTES

A. February 28, 2023 Draft Minutes, Regular Planning Commission

**MOTION:** *by Mr. Pedersen to approve the February 28, 2023 Planning Commission Regular Meeting minutes with a correction to change Vice Chair designation from Mr. Voelckers to Ms. Cole.*

V. **BRIEF REVIEW OF THE RULES FOR PUBLIC PARTICIPATION** by Chair LeVine

VI. **PUBLIC PARTICIPATION ON NON-AGENDA ITEMS** – None

VII. **ITEMS FOR RECONSIDERATION** – None

VIII. **CONSENT AGENDA** – None

IX. **UNFINISHED BUSINESS** – None

X. **REGULAR AGENDA**

Cases **USE2023-0001** and **PWP2023-0001** were presented together.

**Case Number:** **USE2023 0001:** Conditional Use Permit for an accessory apartment on an undersized lot.  
**Applicant:** Mark Regan  
**Location:** 1718 Evergreen Ave

**Staff Recommendation**

Staff recommends the Planning Commission adopt the Director’s analysis and findings, and APPROVE WITH CONDITIONS the requested Conditional Use Permit.

**Case Number:** **PWP2023 0001:** Parking Waiver to waive one (1) parking space for an accessory apartment.  
**Applicant:** Mark Regan  
**Location:** 1718 Evergreen Ave

**Staff Recommendation**

Staff recommends the Planning Commission adopt Director’s analysis and findings and APPROVE the requested Parking Waiver.

**STAFF PRESENTATION** – Ms. Maclean presented **USE2023-0001** and **PWP2023-0001** together.

**APPLICANT PRESENTATION** – Mark Regan, property owner, desires to sell the property at 1718 Evergreen. To do so, the unfinished dirt floor basement would need to be finished into a

completed basement apartment. Addressing the parking, there is currently a single carport dug into the hillside. Adding another would require further excavating into the hillside and would result in the loss of available on-street parking spaces. A parking waiver would make sense for this property.

Meredith Trainor, prospective property buyer, spoke in agreement with Mr. Regan and said that the proposed parking waiver would be what is best for the neighborhood because it allows for the neighbors to utilize the parking in the case that it is not needed for the property.

QUESTIONS FOR APPLICANT

Mr. Voelckers referenced public comments saying parking in the area is constrained and contrasted that with CBJ statements that there are some open spaces in the area. Ms. Trainor stated there are parking spaces that are usually available. If they were to put in a carport, that would take away access to that amount of space along the street.

Mr. Pedersen asked if the applicants saw any potential problems with the proposed conditions for the accessory apartment permit.

AT EASE 7:30 p.m. - 7:33 p.m.

Mr. Regan said the condition related to the parking waiver is fine. The advisory condition regarding informing tenants is also fine. He did have concerns regarding the requirement for a professional engineer report, he said they are facing closing deadlines on the purchase and there will not be time to hire an engineer and get any potential work completed in that timeframe. He asked the PC for information as to what the required mitigating measures might be.

Mr. LeVine asked for confirmation that the footprint of the building would not be changed with the construction of the accessory apartment. It was confirmed that the footprint would not change, the major change would be pouring a concrete ‘foundation like’ floor which would serve to make the dwelling more stable.

Ms. Cole asked if she was clear that creating a private parking space would result in removal of public parking from the road. Ms. Trainor confirmed that building a dedicated space for the property would actually remove two on street parking spaces.

QUESTIONS FOR STAFF

Mr. Arndt asked if, based on the ordinance proposed at the COW, this property being in a moderate zone would not be regulated.

Mr. Epstein spoke in support of removing Conditions 2 and 3.

**MOTION:** *by Mr. Voelckers to accept staff’s findings, analysis, and recommendations, and approve USE2023 0001 and striking conditions 2 and 3.*

Mr. Voelckers spoke in support of his motion saying he believes public welfare is well served by striking the conditions.

Ms. Cole and Mr. LeVine suggested modifying the term “conditions” to “condition” in the findings.

**The motion passed with no objection.**

**MOTION:** *by Mr. Voelckers to accept staff’s findings, analysis, and recommendations, and approve PWP2023 0001.*

Mr. Pedersen and Ms. Cole spoke in support of the motion. Mr. Arndt recommended grammatical changes to the findings to reflect there are no conditions. Mr. Epstein spoke in support and pointed out that CBJ departments also supported it.

**The motion passed with no objection.**

**Case Number:**       **AME2023 0001:** Repeal Wetland Review Board

STAFF PRESENTATION – Ms. Maclean stated the board has met its needs, has not met in several years, and needs to be repealed.

**MOTION:** *by Mr. Pedersen to accept staff’s findings, analysis, and recommendations, and REPEAL AME2023 0001.*

**The motion passed with no objection.**

AT EASE 7:52 p.m. – 8:00 p.m.

**Case Number:**       **AME2017 0001:** Streams & other Waterbodies Ordinance (anadromous waterbodies buffer).

STAFF PRESENTATION – Ms. Maclean presented **AME2017 0001** and explained the proposed Ordinance would amend CBJ 49.70.310 *Habitat* to revise the stream buffer ordinance.

QUESTIONS FOR STAFF

Mr. LeVine asked Ms. Maclean to summarize the table on page 6 of 18. Ms. Maclean explained the information in the table had previously been in the ordinance verbiage and was very lengthy and confusing. Putting it into table format makes it more user-friendly and understandable. The table lists uses and categorizes them as 1 (minor development) or 3 (major

development). Uses determined to be minor are approved at the department level. Major uses require PC decisions.

Mr. Arndt noted Page 4 Line 3 “the primary element or woody vegetation” saying the intention was where the trunk of the tree or the stalk of the brush touches the ground and asked if that is clear. Ms. Maclean said she would leave it to the preference of the PC whether to keep or change the language.

Ms. Cole cited page 5 (1) *Unlisted Uses* and page 4 table item number 12 “Uses not listed, or not otherwise prohibited” and noted they seem contradictory. Ms. Maclean agreed and explained (1) *Unlisted Uses* is the standard language in current code. She was comfortable striking either (1) or table item 12 according to PC preference. She added that, without this item in the table, the PC gives up its authority to determine unlisted uses to the Assembly.

Mr. Voelckers noted page 2 lines 8-18 seem to be only relevant to Benjamin Island within the stellar sea lion habitat. Should this be removed? Ms. Maclean explained when the coastal zone management section of code was repealed, this was in there. At that point, this section was moved here. Mr. Arndt and Mr. Voelckers noted that this seems to be out of place in the Marine Mammal Habitat Protections code section and suggested it would fit better in another or its own section. Mr. LeVine stated there is already nearly the same language in the Anadromous Stream Habitat section.

**PUBLIC COMMENT**

*Dave Hanna - Back Loop Road* – Mr. Hanna thanked the PC for bringing this forward. He suggested several changes including removing item 6 from the table on page 6 saying it is covered by item 7. He felt that (3)(A) on page 9 should be reworded. Regarding the two-week timeframe for emergency work on Page 13, he felt that requiring completion within two weeks may be too restrictive. He also suggested striking the requirement for an engineer certification.

Ms. Cole asked Mr. Hanna to clarify his thoughts regarding the two-week emergency timeframe. Mr. Hanna explained there could be a case whereby the work could be started but not completed within two weeks. Ms. Cole supports this as the exception and if it cannot be completed in two-weeks then this allows for emergency stabilization to give time for a Conditional Use Permit (CUP) to be processed.

**QUESTIONS FOR STAFF**

In discussion, it was pointed out that the ordinance references stormwater best management practices. However, they have never been officially adopted into code or regulation. Rather than requiring applicants to use particular best management practices, they could choose to obtain an engineer’s letter stating methods used meet proper thresholds.

Ms. Cole referred to the table on page 6 and asked if the Department would be comfortable with more of the items in the table being categorized as 1 (minor) and asked the Director for her feedback. Ms. Maclean explained that she felt that, at the very least, all of the items marked “3” and anything within the inner (0 – 25 feet) buffer zone should remain under PC purview.

AT EASE 8:49 p.m. – 9:01 p.m.

**MOTION:** *by Ms. Cole to accept staff’s findings, analysis, and forward a recommendation to the assembly to approve AME2017 0001 with the following modifications:*

1. *Page 2 - move Section B to its own section*
2. *Page 3 Line 24 - strike #3, and modify #4 (the new #3) with modification to read “(3) Vegetation that overhangs or overlaps any buffer shall follow the regulation applicable to the main trunk or stalk of the vegetation.”*
3. *Page 4 Line 13 - change Fish culturing to Aquaculture*
4. *Page 5 strike #1 and #2 and renumber*
5. *Page 6 Table - add a 3 in line 6, inner buffer column*
6. *Page 6 Table - add a 1 and a 3 in line 10 inner buffer column*
7. *Page 7 Line 20 - change to “The Director determines that the outcome of the proposed activity or the cumulative effects of activity or development in a buffer would likely cause severe impacts in the buffer after project completion, the application shall be subject to commission review”*
8. *Page 15 Line 3 - strike “within one growing season”*
9. *Page 16 Line 3 - strike “for an administrative variance” and replace with “may apply to the commission for approval”*
10. *Page 18 Lines 17-18 - strike both lines*

AT EASE 9:11 p.m. – 9:12 p.m.

Ms. Cole spoke to her motion, line by line:

1. This is in the wrong section and needs to be its own section.
2. This is to simplify the idea of overhang and limbs. If the trunk is within the 0-25-foot or 25–50-foot buffer than that will also govern the limbs. If the trunk is outside of 50-feet then it is allowed to be cut wherever the limbs end up with regard to the stream.
3. Fish culturing is specific to fish only and aquaculture is more general.
4. Strike #1 and #2 as they may not make sense with the table.
5. Added 3 to the inner buffer zone with the expectation that while the purpose may be to dissuade development along the inner buffer, there may be a need for vegetation removal and this allows a level of flexibility.
6. This employs the same kind of logic with trail development.

Ms. Maclean expressed concerns saying 0-25 feet is minimal and there should be some line of protection. She reminded the PC that they had denied Parks and Recreation from doing almost



the same thing telling them to relocate the trail. Mr. Voelckers recalled the case but added there still could be a case whereby a trail is against a rock cliff or other barrier and not relocatable.

7. Ms. Cole said she did not like the phrase “in or near a buffer” as this is really talking about “in a buffer”. She added that she thought the intent was that the outcome would cause the impact rather than activities of the construction phase.

Ms. Maclean felt ‘more than minimal’ is a benefit to the applicant because if it can go all the way to “severe” before the PC sees it, then it is more likely that the Director will deny the permit and the PC will never see it.

Mr. LeVine strongly disagreed with the addition of the “after project completion” phrase. Ms. Cole’s intention was to acknowledge that there may be disruption during construction but it would be restored at the end of the project. Ms. Maclean expressed concern with the change from “proposed activity” to “outcome”. She explained that the proposed activity is what she is reviewing applications for approval.

At the end of the discussion, the proposed wording is *“The Director determines that the outcome of the proposed activity or the cumulative effects of activity or development in a buffer would likely cause more than minimal impacts in the buffer after project completion, the application shall be subject to commission review”*

8. Ms. Cole felt “within one growing season” is restrictive considering it can be hard to meet that timeframe in our environment.

Ms. Maclean said the Department is understanding and allows for leeway in this but felt there should be some limit.

Mr. Brown suggested changing from “one growing season” to “two growing seasons”. Mr. LeVine suggested 2 years.

At the end of the discussion, the proposed wording became *“within 24 months of project completion.”*

9. The wording changed to *“may apply for a variance”*.
10. Ms. Cole proposed striking lines 17 and 18 because the definition is not needed.

#### COMMISSION PAGE BY PAGE DISCUSSION OF AME2017 0001

- Pages 1, 2, 3 – No changes
- Page 4 – Mr. Arndt suggested Line 22 be altered to read, “There is an adopted ~~the~~ Table of ~~p~~Permissible uUses in aAnadromous fFish hHabitat bBuffers, ...”
- Page 5 – Mr. Arndt and Mr. LeVine suggested:
  - Strike lines 4-24 and replace them with:
    - **(1) Uses listed with the number 1 indicate the use requires department approval**

- **(2) Uses listed with the number 3 indicate the use requires commission approval**
- **(3) Uses listed with digits 1,3 indicate the use follows the underlying development's approval process. If the project is a major activity requiring a major development permit, only one CUP will be required.**
- Page 6 – Table of Permissible Uses in Anadromous Waterbodies Buffers CBJ 49.70.315
  - 10.0 – Mr. Arndt suggested “Trail construction ~~and or~~ trail maintenance...”
  - 11.0 – Mr. Arndt suggested changing this item to distinguish 1,3 if the land is under common ownership and 3,3 if it crosses land with other owners.

Ms. Maclean felt it is important that these decisions come before the commission.

- Pages 7, 8 – No Changes
- Page 9 – Mr. Brown suggested Line 19 be clarified, “The director shall ~~endeavor to~~ determine whether the application accurately reflects the developer’s intentions ~~goals~~, ...”

Ms. Maclean explained the department needs to be sure to understand what the applicant is proposing and guide them appropriately. She reminded the PC that applicants are not all building professionals.

- Pages 10, 11, 12 - No Changes
- Page 13 –
  - Mr. Bell asked for clarity on the requirement in line 14 to obtain an engineer. Ms. Maclean said this should not be in here and she supports removing lines 8-14. The commission agreed to strike lines 8-14.
  - Mr. Brown expressed concern with the two-week requirement in Line 4 saying two weeks may not be enough time. It was decided to leave it as is with the understanding that if conditions persist, they could request another emergency permit or use that time to apply for a regular permit.
- Page 14 –
  - Mr. Epstein suggested Line 4 be amended to, “**2010** CBJ’s Manual of Stormwater Best Management Practices ~~(2010)~~...” to match the verbiage at Page 15 Line 24.
  - Mr. Arndt suggested Line 11 be amended to read, “...may apply for an ~~administrative~~ variance.”
  - Mr. Arndt suggested pulling the Anadromous Fish Habitat Best Management Practices from the ordinance and posting them as has been done with the Stormwater BMP. Ms. Maclean did not agree that this would be the best course of action. She explained that the Assembly could remove it upon review but if the commission removes it and then the Assembly wants to add it then it would substantially slow the progress towards getting the ordinance passed. It was decided to leave it in the proposed ordinance and to note for the record that the PC believes the Assembly should consider not codifying the BMP at this point but instead reference them as is done with the Stormwater BMP.
- Page 15 –
  - Mr. LeVine suggested adding a section to read, “For all references to the 2010 CBJ Manual of Stormwater Best Management Practices, a developer may, in the

*alternative, provide a drainage plan and vegetative plan signed by an engineer licensed in the State of Alaska certifying that the plans address stormwater BMPs and plantings required for slope stability and stormwater.*

Mr. LeVine was unsure where exactly in the ordinance to put this. Ms. Maclean said she would work with Attorney Layne and put it in an appropriate location.

- Mr. Brown suggested striking “Areas previously degraded by human activity shall be revegetated” from Line 5. Ms. Maclean reminded the commission the purpose of the ordinance is protection of habitat. It was decided to delete the line.
- Page 16 – No Changes
- Page 17 – Mr. Arndt suggested delete “and” from Line 7 and add “, and improve habitat.” to the end of Line 8.
- Page 18 – No Changes

Ms. Cole rescinded her motion.

**MOTION:** *by Ms. Cole to accept staff’s findings, analysis, and forward a recommendation to the assembly to approve AME2017 0001 with the agreed upon modifications.*

***The motion passed with no objection.***

XI. **OTHER BUSINESS** – None

XII. **STAFF REPORTS** – None

XIII. **COMMITTEE REPORTS**

Title 49 – Mr. Arndt: Next meeting will be third Thursday in April

PWFC – Mr. Voelckers: Discussion included the CIP list and New City Hall

XIV. **LIAISON REPORTS** – None

XV. **CONTINUATION OF PUBLIC PARTICIPATION ON NON-AGENDA ITEMS** – None

XVI. **PLANNING COMMISSION COMMENTS AND QUESTIONS** – None

XVII. **EXECUTIVE SESSION** – None

XVIII. **ADJOURNMENT** – 10:50 p.m.

Next regular meeting April 11, 2023

*Respectfully submitted by Kathleen Jorgensen Business Assists (907)723-6134* 

**Assembly Goals 2023**Assembly Goals-Approved at the  
1/30/2023 Assembly Meeting**1. Housing - Assure adequate and affordable housing for all CBJ residents**

		<b>Implementing Actions</b>	<b>Responsibility</b>	<b>Notes:</b>
A	P	Revise and improve Title 49 to facilitate housing	Assembly, Planning Commission, Manager's Office, CDD	
B	P/F	Continue to monitor and track progress towards advancing the goals of the Housing Action Plan	Assembly, Manager's Office	<i>Revised goal</i>
C	P/F/ O	Continue aggressive use of the Affordable Housing Fund, tax abatement, and other loan and grant programs	Assembly, Manager's Office	<i>Revised goal</i>
D	P/F/ AA	Evaluate and revise current CBJ systems associated with managing land and revising T49 in order to get big things done fast	Assembly, Manager's Office, CDD, Law	<i>New goal</i>
E	P/F	Continue planning and implementation of (re)development of Telephone Hill, Pederson Hill, and the 2nd/Franklin property	Assembly, Manager's Office	<i>New goal</i>
F	P/F	Reduce barriers to downtown housing development	Assembly, Manager's Office, CDD	<i>Revised goal</i>

**2. Economic Development - Assure Juneau has a vibrant, diverse local economy**

AA*		<b>Implementing Actions</b>	<b>Responsibility</b>	<b>Notes:</b>
A	F/O	Update the Comprehensive Plan	Assembly, Planning Commission, Manager's Office, CDD	
B	O	Draft a resolution adopting the long term goals of the VITF, establish contractual relationships with private dock managers, analyze existing passenger fee structure, and explore methods to create a pathway towards functional municipal management of the waterfront.	Assembly, Manager's Office, Docks & Harbors	<i>Revised goal</i>
C	P/F/ O/S	Implement project strategy for Juneau Economic Plan, including revitalizing downtown, with regular updates	Assembly, Manager's Office	
D	F	Explore financing for the Capital Civic Center	Assembly, Manager's Office, Finance	
E	P/F/ S	Support Eaglecrest's objective of becoming self-sufficient	Assembly, Manager's Office, Eaglecrest	<i>Revised goal</i>
F	P/F	Pursue and plan for West Douglas and Channel Crossing	Assembly, CDD, Planning Commission, Manager's Office	
G	P/F/ S	Explore options for redeveloping under used downtown property	Assembly, CDD, Manager's Office, Engineering & Public Works	<i>New goal</i>

**Assembly Goals 2023**Assembly Goals-Approved at the  
1/30/2023 Assembly Meeting**3. Sustainable Budget and Organization - Assure CBJ is able to deliver services in a cost efficient and effective manner that meets the needs of the community**

AA*		Implementing Actions	Responsibility	Notes:
A	P/F	Develop strategy for fund balance and protect restricted budget reserve	Assembly, Manager's Office, Finance	
B	P/F	Continue to evaluate sales tax structure including equity and evaluate removing sales tax on food	Assembly, Manager's Office, Finance	
C	P	Long term strategic planning for CIPs	Assembly, Manager's Office, EPW	
D	P/F	Reduce mil rate as appropriate	Assembly, Manager's Office, Finance	
E	F/O	Allocate resources to implement Assembly goals	Assembly, Manager's Office, Finance	
F	F/O	Maintain Assembly focus on deferred maintenance including BRH and JSD.	Assembly, Manager's Office, EPW, all operating departments with facilities	
G	P/F	Examine social service funding levels and process	Assembly, Manager's Office	Moved from Community, Wellness, and Public Safety
*Assembly Action to Move Forward: P = Policy Development, F = Funding , S = Support, O = Operational Issue				

**Assembly Goals 2023**Assembly Goals-Approved at the  
1/30/2023 Assembly Meeting**4. Community, Wellness, and Public Safety - Juneau is safe and welcoming for all citizens**

	AA*	Implementing Actions	Responsibility	Notes:
A	P/O/S	Acknowledge and honor Juneau's indigenous culture, place names, naming policy, and recognize Elizabeth Peratrovich Day	Assembly, Manager's Office, Human Resources Committee	
B	P/S	Explore government to government relations with tribes	Assembly, Manager's Office	
C	P/O/F	Explore fully subsidizing transit and eliminating fares	Assembly, Manager's Office, EPW	<i>New goal</i>

**5. Sustainable Community - Juneau will maintain a resilient social, economic, and environmental habitat for existing population and future generations.**

	AA*	Implementing Actions	Responsibility	Notes:
A	P/O	Develop a zero waste or waste reduction plan	Assembly, Manager's Office, EPW, Finance	
B	P/O	Develop strategy to measure, track and reduce CBJ energy consumption.	Assembly, Manager's Office, all departments	
C	P/O/F	Implement projects and strategies that advance the goal of reliance on 80% of renewable energy sources by 2045	Assembly, Manager's Office, all departments	
D	P/F	Prepare a changing climate hazards mitigation / resilience strategy	Assembly, Manager's Office, EPW	<i>New goal - nb: JCOS retreat memo I&amp;I, Mass Wasting</i>
E	P/O/F	Develop strategy to reduce abandoned/junked vehicles	Assembly, Manager's Office, EPW, Law, P&R, D&H	

\*Assembly Action to Move Forward: P = Policy Development, F = Funding, S = Support, O = Operational Issue